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FEDERAL COMMUNICATIONS COMMISSION

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FCC 74-256

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 87.115 OF THE COMMISSION'S RULES TO PROVIDE AN ABBREVIATED METHOD OF AIRCRAFT IDENTIFICATION DURING ORGANIZED FLYING ACTIVITY OF SHORT DURATION	Docket No. 19881

REPORT AND ORDER

(Proceeding Terminated)

(Adopted March 13, 1974; Released March 18, 1974)

BY THE COMMISSION:

1. A Notice of Proposed Rule Making in the above-captioned matter was released on November 30, 1973 (38 FR 33618). No comments or reply comments in response to that Notice have been received.

2. Accordingly, for the reasons set forth in the Notice of Proposed Rule Making, the amendment of Section 87.115 of the rules, as originally proposed, appears warranted.

3. In view of the above, IT IS ORDERED, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, That effective April 29, 1974, Part 87 of the Commission's rules is amended as set forth in the attached Appendix.

4. IT IS FURTHER ORDERED, That the proceeding in Docket No. 19881 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 87 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Section 87.115(e)(1)(iii) is amended to read as follows:

§ 87.115 Station Identification.

* * * * * * *

(e) * * *

(1) * * *

(iii) An aircraft identification approved in advance by the Commission after coordination with the FAA for use by aircraft stations participating in an organized flying activity of short duration. The Commission shall be advised in advance of each event of the registration marking (N number) of each participating aircraft.

NOTE: Approval of the identification method permitted in subdivision (iii) will be expedited when the requesting organization coordinates with FAA Headquarters, Washington, D.C., prior to submitting the request to the Commission.

* * * * * * *

FCC 73-181

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In Re Complaint of
THE AMERICAN VEGETARIAN UNION
against
WLWD-TV, DAYTON, OHIO

ORDER

(Adopted February 14, 1973; Released February 27, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONER REID ABSENT.

1. The Commission has before it an Application for Review filed on December 27, 1972 by the American Vegetarian Union of the ruling of the Broadcast Bureau of December 13, 1972.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115 (g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

FCC 74M-310

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMERICAN TELEPHONE & TELEGRAPH CO.
Application for Authority Under Section 214 of the Communications Act of 1934, To Lease From the Communications Satellite Corp., and To Operate, Circuits Between an Appropriate North American Earth Station or Stations and an Appropriate Communications Satellite or Satellites Over the Pacific Ocean To Provide Communications Services Between the United States and Points in the Pacific Area (Excluding Hawaii)

File No. I-P-C-7414-7

ORDER AND AUTHORIZATION

(Adopted March 20, 1974; Released March 22, 1974)

BY THE TELEPHONE COMMITTEE:

1. The Commission is considering herein:

(a) An application, File No. I-P-C-7414-7, filed on February 5, 1974 by the American Telephone and Telegraph Company (AT&T), requesting authority pursuant to Section 214 of the Communications Act of 1934 to

(1) lease from Communications Satellite Corporation (COMSAT) and operate additional satellite voice circuits and necessary connecting facilities which would authorize AT&T to use a total of 385 satellite voice circuits between the United States and points in the Pacific Ocean Basin (excluding Hawaii); and

(2) lease and operate necessary connecting facilities from the overseas earth stations to the borders of overseas points as specified in the Appendix hereto.

2. Application File No. I-P-C-7414-7 was listed on the Commission's Public Notice of Applications Accepted for Filing of February 19, 1974. Copies thereof, together with notices extending the opportunity to file comments, were served on all parties required to be served by statute and other interested parties. No comments were received.

3. The instant application requests a total of 385 satellite voice circuits to provide AT&T's anticipated service requirements to points in the Pacific Area (excluding Hawaii) for the Calendar Year 1974. In the past the Commission has granted authority to provide service to those points by formal and temporary authorizations, which have

enabled AT&T to acquire a total of 306 such circuits. The following table sets forth:

(a) The countries with which AT&T has been authorized, or requests authority, to lease and operate satellite circuits;

(b) the number of satellite voice-grade circuits AT&T has been authorized to lease and operate between the United States Mainland and such points;

(c) the number of satellite circuits to such countries that AT&T was operating on January 31, 1974; and

(d) the number of satellite circuits to such countries requested by the subject application to meet demands for service through December 31, 1974.

Satellite circuit data [1]

Between the U.S. mainland and	Foreign earth station used [2]	Satellite voice circuits		
		Authorized [3]	In use [4]	Requested
Australia		16	19	30
China, Peoples Republic of		[6] 7	2	4
China, Republic of		22	30	34
Guam		12	11	18
Hong Kong		21	21	27
Japan [5]		[7] 125	118	145
Korea		[8] 41	38	42
Malaysia	Hong Kong	2	1	6
New Zealand		[9] 10	9	12
Philippines		21	17	29
Singapore	do	9	6	14
Thailand		16	12	18
Vietnam	Hong Kong/Guam	4	2	6
Total		306	286	385

[1] Circuits authorized, opefating, and requested herein are circuits between an appropriate earth station or stations on the west coast of North America and an appropriate satellite or satellites over the Pacific Ocean, connecting with like circuits between the satellites and earth stations at overseas points furnished by A.T. & T.'s correspondents.

[2] This column indicates the foreign earth station used to provide the satellite circuits only in those cases where there is no earth station in the country to which service is provided.

[3] The Commission's Order and Authorization adopted Oct. 30, 1973, File No. P-C-7414-5, authorized A.T. & T. to lease and operate up to 287 satellite voice circuits between the U.S. mainland and points in the Pacific (excluding Hawaii).

[4] Since the Commission's Order and Authorization, adopted Oct. 30, 1973, authorized A.T. & T. to operate a greater or lesser number of circuits than that specifically authorized to each point as long as A.T. & T. did not exceed its total authorization to all points authorized, this column may indicate a greater usage to a given point than specifically authorized.

[5] Includes Okinawa.

[6] Temporary authorization granted Nov. 26, 1973, extended Jan. 30, 1974, and expiring Mar. 31, 1974, for A.T. & T. to lease and operate 4 satellite voice circuits for the provision of service to the Republic of China.

[7] Temporary authorization granted Nov. 26, 1973, extended Jan. 30, 1974, and expiring Mar. 31, 1974, for A.T. & T. to lease and operate 7 satellite voice circuits for the provision of service to Japan.

[8] Temporary authorization granted Nov. 26, 1973, extended Jan. 30, 1974, and expiring Mar. 31, 1974, for A.T. & T. to lease and operate 6 satellite voice circuits for the provision of service to Korea.

[9] Temporary authorization granted Nov. 26, 1973, extended Jan. 30, 1974, and expiring Mar. 31, 1974, for A.T. & T. to lease and operate 2 satellite voice circuits for the provision of service to New Zealand.

4. AT&T represents that demand for telephone service between the United States Mainland and points in the Pacific has been growing at a steady rate. To support that contention, AT&T does not indicate in what specific countries this increase is expected to take place, but only provides its estimate of the message telephone traffic between the Mainland and the Pacific Area for the years 1972 through 1975.

Year end:	*Messages (1,000's)*
1972	2,989 (actual)
1973	3,926 (preliminary)
1974	5,104 (forecast)
1975	6,889 (forecast)

While it is apparent from the above figures that demand for telephone service is increasing, we do not find that AT&T has presented sufficient factual data to support its contention that such growth justifies the authorization of all 385 requested circuits. Therefore, we will grant AT&T's application in part for the number of circuits we believe will be required through year-end 1974, based on our analysis of telephone traffic growth for all authorized services to points in the Pacific and on AT&T's past circuit use. This action is, of course, taken without prejudice to future applications for circuits to Pacific points. AT&T will also be granted authority to use a greater or lesser quantity of satellite circuits than the number specified in the Appendix for each country or area, as well as requisite transiting circuits, so long as the total number used does not exceed the total number for which authority is herein granted. The total estimated monthly cost to AT&T for the 370 authorized satellite circuits and necessary transiting facilities will approximate $1,810,000.

5. In view of the foregoing, acquisition and operation of the requested facilities, in part, are desirable and in the public interest, and a grant of the application to the extent set forth below will serve the public convenience and necessity.

6. Accordingly, **IT IS ORDERED**, pursuant to Section 0.215 of the Commission's Rules on Delegations of Authority, that the application of American Telephone and Telegraph Company, File No. I–P–C–7414–7, **IS GRANTED** in part to the extent set forth below for a term commencing with the issuance of this Order and Authorization and ending December 31, 1974; and

(A) AT&T is authorized to

(1) acquire by lease and operate the quantity of satellite voice circuits between an appropriate earth station or stations on the west coast of North America and a satellite or satellites over the Pacific Ocean for the provision of service to the countries as specified in the Appendix hereto;

(2) acquire by lease and operate a one-half interest in the necessary connecting facilities from the foreign earth stations to the borders of the overseas countries as specified in the Appendix hereto;

(3) use the facilities authorized herein for the provision of message telephone service, private-line circuits for voice use only, and program transmission service between the United States Mainland and the countries or areas specified in the Appendix hereto and beyond; and

(4) lease and operate a greater or lesser number of satellite circuits and terrestrial connecting circuits than those specified in the Appendix hereto for each country or area listed therein, provided that AT&T shall not acquire more than the total of satellite voice circuits listed in the Appendix hereto;

(B) this authorization shall continue on a year-to-year basis commencing January 1, 1975, unless the Commission notifies the applicant to the contrary and requires the filing of a new application on or before December 1 of the then current authorization term;

(C) AT&T is authorized to use voice circuits in the SEACOM cable system it has previously been authorized to acquire on an indefeasible right-of-user (IRU) basis in conjunction with the satellite circuits authorized herein, provided, however, this Order and Authorization does not authorize the acquisition of additional interest in circuits in this cable, or the acquisition of additional interests in any other communications facilities on an IRU basis;

(D) the authority granted herein covers only the acquisition and operation specified above, and does not cover the acquisition and operation of any equipment which may be utilized to increase the number of normal voice-grade circuits derived, or the number of messages which may be handled via each circuit;

(E) the Commission's previous formal and existing temporary authorizations as specified herein for AT&T to acquire and operate satellite circuits between the United States Mainland and points in the Pacific Area ARE HEREBY CANCELLED AND SUPERSEDED;

(F) AT&T shall submit its blanket application for satellite circuits between the United States Mainland and points in the Pacific for Calendar Year 1975 on or before January 31, 1975; and

(G) jurisdiction is retained over all aspects of this matter, specifically including, if necessary, the reallocation of circuits in the satellite system among the various carriers and other authorized users, if any, and from voice to record carriers, or record to voice carriers, and between record carriers in order to insure that all present and future authorized carriers shall have nondiscriminatory use of and equitable access to the communications satellite system.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Voice circuits authorized

For operation with	Number	Overseas transiting		
		From earth station	To border of	Number
Australia	30			
China, Peoples Republic of	4			
China, Republic of	36			
Guam	15			
Hong Kong	27			
Japan	145			
Korea	47			
Malaysia	4	Hong Kong	Malaysia	[1] 4
New Zealand	12			
Philippines	22			
Singapore	9	do	Singapore	[2] 9
Thailand	15			
Vietnam	4	Hong Kong/Guam	Vietnam	[3] 0
Total	370			

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[1] A.T. & T. is authorized to use the indicated number of previously authorized circuits in the SEACOM cable system between Hong Kong and Singapore, and landline circuits between the Hong Kong earth station and the Hong Kong terminal of the SEACOM cable system and between the Singapore terminal of said cable system and the border of Malaysia furnished by its correspondent at no cost to A.T. & T. to extend the subject satellite circuits to Malaysia.

[2] A.T. & T. is authorized to use the indicated number of previously authorized circuits in the SEACOM cable system between Hong Kong and Singapore, and landline circuits between the Hong Kong earth station and Hong Kong terminal of said cable system furnished by its correspondent at no cost to A.T. & T. to extend the subject satellite circuits to Singapore.

[3] Extension circuits beyond the earth stations at Guam and Hong Kong to Vietnam are provided by connecting carriers.

FCC 74R-100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of
AMOS JOSEPH MATHEWSON, TRADING AS BUD'S BROADCASTING CO., BANNING, CALIF. — Docket No. 19778, File No. BP-19212
FREDERICK R. COTE, BANNING, CALIF. — Docket No. 19780, File No. BP-19376
MILTON CHARLES HOLDEN, BETTEE H. HOLDEN, WILLIAM R. BAILER, MARY ESTELLA BAILER, AND ADAM JOHN MUGNI D.B.A. H&B BROADCASTING CO., YUCAIPA, CALIF. — Docket No. 19781, File No. BP-19377
For Construction Permits

MEMORANDUM OPINION AND ORDER

(Adopted March 18, 1974; Released March 20, 1974)

BY THE REVIEW BOARD:

1. By Memorandum Opinion and Order, FCC 73-725, released July 12, 1973, 38 FR 19282, published July 19, 1973, the Commission designated the above-captioned applications for hearing on various issues, including a financial qualifications issue against Frederick R. Cote (Cote).[1] Hearings were held in November, 1973. Now before the Review Board is a petition to enlarge issues, filed January 18, 1974, by Amos Joseph Mathewson tr/as Bud's Broadcasting Co. (Bud), requesting the addition of a site availability issue against Cote.[2]

2. Petitioner asserts that in November, 1973, Mathewson visited the proposed Cote transmitter site and observed that the shape and dimensions of the property are different and, in fact, smaller than those shown on the plat submitted with Cote's application. In support, petitioner submits a copy of a plat, dated August, 1959, and attached to a "sworn certification" or a "duly licensed land surveyor." The significance of the discrepancy, in Bud's view, is that the 165 feet long ground radials as proposed by Cote are the minimum length he can use and still comply with Commission Rule 73.189(b)(5),[3] and yet, because the true dimensions of Cote's transmitter site are smaller than shown and cannot contain 120 radials each, 165 feet long, Cote cannot comply with this Rule. Therefore, argues Bud, Cote's engineering proposal is "invalid." In addition, contends Bud, Cote's financial pro-

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[1] The Commission also stated that, in the event of a grant of Cote's application, the applicant would be required to submit field intensity measurement data establishing that the radiation had been reduced to 150 mv/m/kw, as proposed.

[2] Also before the Board are the following related pleadings: (a) opposition, filed January 29, 1974, by Cote; (b) opposition, filed January 31, 1974, by the Broadcast Bureau; and (c) reply, filed February 11, 1974, by Bud.

[3] Commission Rule 73.189(b)(5) specifies, *inter alia*, that a "ground system should consist of buried radial wires at least one-fourth wave length long."

posal is "invalid" because Cote has not shown the ability to acquire additional property to meet engineering requirements. Finally, Bud concedes that its petition is not timely filed and will cause some "inconvenience to the decisionmaking process," but urges that its delay is "excusable neglect." Thus, Bud states that the reason a request for enlargement was not made upon discovery of the information herein relied upon was that Mathewson did not have communications counsel until after commencement of the hearing, at which time inquiry into the availability of Cote's proposed site was denied by the Administrative Law Judge as being outside the scope of the issues.[4] At any rate, argues Bud, the public interest requires addition of the requested issue for a matter so important as an adequate transmitter site, citing *The Edgefield-Saluda Radio Co.*, 5 FCC 2d 148, 8 RR 2d 611 (1966).

3. The Review Board agrees with Cote and the Broadcast Bureau that Bud's petition should be denied. The petition was filed almost six months after the Federal Register publication date and over two months after discovery of the facts upon which it is based. Thus, it is grossly untimely. See Section 1.229(b) of the Commission's Rules. Moreover, the petition concerns matters that are contained in Cote's application, which was filed in March, 1973. Nor does the Board believe that Bud has shown good cause for the untimeliness because the lack of counsel cannot excuse the degree of untimeliness involved here. *Cf. Silver Beehive Telephone Co.*, 34 FCC 2d 738, 24 RR 2d 238 (1972). Next, the Board is of the view that petitioner's allegations do not meet the *Edgefield-Saluda* test because the likelihood of proving the allegations is not so substantial as to outweigh the public interest benefits inherent in the orderly and fair administration of the Commission's business. Even, assuming *arguendo*, that the property boundaries are as depicted by Bud and that the Cote ground radials are limited by these boundaries, the radiation (as shown by the Bureau and Cote) would still be above the minimum required, i.e., 150 mv/m/kw. See Rules 73.182r) and 73.189(2)(i). In this regard, we note that the Commission, in the designation Order (see note 1, *supra*), stated that in the event of a grant of Cote's application, it would require proof that the radiation from the system is essentially 150 mv/m/kw. Furthermore, having concluded that Cote can meet minimum radiation requirements, we do not agree with Bud that strict adherence to Rule 73.189(b)(5) is required. See *Tri-County Broad-Casting Co.*, 40 FCC 2d 167, 169, 26 RR 2d 1580, 1583 (1973). *Cf. The Edgefield-Saluda Radio Co.*, *supra*, 5 FCC 2d at 152, 8 RR 2d at 618. Finally, we do not believe that the circumstances present here indicate any motive for misrepresentation on Cote's part.[5]

4. Accordingly, IT IS ORDERED, That the petition to enlarge issues, filed January 18, 1974, by Bud's Broadcasting Co. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[4] Bud does not contest the correctness of this ruling.

[5] The Board notes that the property "option contract" in the Cote application does appear to describe the property as that depicted on the Bud survey plat. Assuming, therefore, that the plat of the proposed Cote site is that depicted by Bud, Cote has the responsibility for amending his application to accurately reflect the site plat and ground system that would be utilized.

FCC 74-238

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice
CONCERNING ACCEPTABLE TESTING PROCEDURES FOR ANNUAL PERFORMANCE TESTS FOR CABLE TELEVISION

MARCH 8, 1974.

ACCEPTABLE TESTING PROCEDURES FOR ANNUAL PERFORMANCE TESTS

The Commission, in its February, 1972, *Cable Television Report & Order*, called for annual performance tests directed at determining the extent to which cable systems were complying with its technical standards. The rules that were then adopted also stated methods for testing compliance and afforded flexibility for alternative methods. We adopted a flexible approach to determining system performance and, as the rules indicate, alternative test procedures which could be fully justified would be permitted. However, at the same time, we stated that the procedures for determining compliance with our radiation standards outlined in the rules, should be followed strictly or, if special circumstances necessitate divergence from established procedures, the alternate procedures should be thoroughly justified. The procedure for measuring radiation is that which has been embodied for years in Part 15 of the rules and is now reflected in Part 76 of the rules. The tests are to be performed by March 31, 1974.

Recent work, as yet incomplete, has indicated that alternative testing methods may be available which show sufficient sensitivity to demonstrate compliance with Commission standards. One procedure being investigated would test for radiation by use of a mobile facility with an antenna and standard television receiver for visual detection. Different procedures apparently may be necessary depending on the size and location of the system (e.g., underground or aerial cable, apartment houses, etc.). A more flexible approach on our part allowing these alternative procedures to be developed may better accomplish our objectives.

Accordingly, with reference to the tests to be performed by March 31, 1974, the Commission is of the view that fully justified alternative methods of detection and testing for radiation should be encouraged, the alternative methods to be measured against the prescribed method to determine adequacy. We anticipate that the data engendered by the alternative tests will be of significant assistance to the Cable Technical Advisory Committee (CTAC) in evaluating appropriate test procedures.

Action by the Commission March 7, 1974. Commissioners Burch (Chairman), Lee, Reid and Wiley with Commissioner Hooks concurring.

FCC 74R-81

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CHESAPEAKE-PORTSMOUTH BROADCASTING CORP., PORTSMOUTH, VA. For Broadcast License for WPMH(AM)	Docket No. 19787 File No. BL-13137

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1974; Released March 11, 1974)

BY THE REVIEW BOARD:

1. The Commission designated the application of Chesapeake-Portsmouth Broadcasting Corporation (Chesapeake-Portsmouth) for a broadcast license for Station WPMH(AM)[1] of Portsmouth, Virginia, for hearing by Order and Notice of Apparent Liability, FCC 73-748, released July 25, 1973, on numerous issues including an adequate supervision and control issue.[2] Presently before the Review Board is the Broadcast Bureau's request for enlargement of issues, filed December 10, 1973, which seeks issues to determine whether Chesapeake-Portsmouth violated Rule 73.93 and Section 318 of the Communications Act by allowing an unlicensed employee to operate its transmitter and whether it violated Rule 73.113 by sanctioning improper logging practices.[3]

2. In support of both requested issues, the Bureau submits the affidavit of Larry V. Bashford, a former WPMH(AM) employee. Bashford, in his affidavit, avers that, in September, 1971, he was asked by Jack Walters, WPMH(AM)'s station manager, to man the station's transmitter and make periodic meter readings. Bashford states that although he informed Walters that he was not a licensed engineer, Walters assured him that he would be under the supervision of the station's engineer, Ralph D. Epperson.[4] Bashford alleges that Epperson gave him "brief instructions" to perform, *inter alia*, the following tasks: (1) the making of periodic readings and entering them on an "unofficial log"; (2) the making of necessary adjustments on the dials if the signals and other electrical data "drifted from the norm"; and (3) the

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[1] The construction permit under which Chesapeake-Portsmouth filed its present application for license was granted November 18, 1971. The application for license was filed on December 8, 1971. Station WPMH(AM) began operation in January, 1972, under program test authority.

[2] The issue seeks: (a) To determine whether the applicant has exercised adequate control and supervision over the policies, practices and other operation of Station WPMH consistent with the degree of responsibility expected of a permittee.

[3] Also before the Review Board are the following related pleadings: (a) opposition, filed January 3, 1974, by Chesapeake-Portsmouth; (b) motion for extension of time and acceptance of late filing, filed January 3, 1974, by Chesapeake-Portsmouth; (c) Broadcast Bureau's reply, filed January 15, 1974; and (d) request for acceptance of additional pleading and response, filed January 28, 1974, by Chesapeake-Portsmouth.

[4] Epperson is president and 25% stockholder of the permittee.

playing of the station's call letters. Furthermore, Bashford claims, Epperson transferred his figures from the "unofficial" to the official log and signed the log, and Epperson also made changes in his figures "every day as they did not sound right." Also, Bashford states that on some mornings he activated the transmitter but more frequently he deactivated it at the end of the day. Finally, Bashford avers, after the first day, he was left substantially on his own. Based on the above allegations, the Bureau argues that Chesapeake-Portsmouth has violated Section 318 of the Act and Commission Rules 73.93 and 73.113, which clearly preclude the above enumerated activities by a non-licensed radio operator; therefore, the Bureau urges, the requested issues are warranted. The Bureau further requests the Board to make it "explicit" that the questions raised by the requests are also relevant to the "permittee responsibility issue."[5] Finally, the Bureau submits that it is filing its request as soon as possible following receipt of Bashford's affidavit on November 16, 1973.

3. In opposition,[6] Chesapeake-Portsmouth argues that the Bureau has not presented any persuasive arguments that good cause exists for granting its late filed pleading. The designation Order was released some five months prior to the Bureau's receipt of Bashford's affidavit on November 16, 1973; yet the Bureau does not set forth any reasons why it could not obtain the affidavit during this period, Chesapeake-Portsmouth argues. Furthermore, Chesapeake-Portsmouth alleges, almost one year elapsed between the time the Commission conducted its investigation of the station in August, 1972, and the release of the designation Order, but the Commission did not deem it appropriate to include the matters raised in Bashford's affidavit in the designation Order. Finally, Chesapeake-Portsmouth asserts that "the attempt to add this issue at this time violates the due process safeguards already provided by the Commission in this proceeding." In support of this assertion, Chesapeake-Portsmouth states that the Commission specified a forfeiture provision in this proceeding in order to provide "flexibility" in the sanctions the Commission can impose. If the Bureau's requested issues are added, Chesapeake-Portsmouth alleges, this flexibility is removed because the events alleged by the Bureau took place over two years ago, prior to the running of the one-year statute of limitations for the imposition of forfeitures provided by Section 503(b)(3) of the Communications Act of 1934, as amended. Consequently, Chesapeake-Portsmouth concludes, if all issues designated against it were resolved in its favor except for these requested issues, the only remedy open to the Administrative Law Judge would be denial of its application.

4. In reply, the Bureau argues that "good cause" under Rule 1.229(b) does exist for the Board's consideration of its late filed pleading. The allegations the Bureau raises first came to its attention when Bashford, *sua sponte*, telephoned the Commission's Norfolk District Office on October 29, 1973, the Bureau explains. On October 30, the Bureau

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[5] See note 2, *supra*.

[6] Chesapeake-Portsmouth filed, on January 3, 1973, a motion for extension of time and acceptance of its late filed opposition. There is no opposition to the motion; therefore, the Board will grant it and consider the pleading.

states, it contacted Bashford and requested the affidavit attached to the instant request. The Bureau concludes that it acted as quickly as possible after receipt of Bashford's affidavit in filing its request.

5. Initially, the Board finds that the Broadcast Bureau has demonstrated good cause to justify the late filing of its request. It is apparent that the Bureau acted as expeditiously as possible in filing its request after first learning from Bashford of the underlying events. Therefore, the Board will accept its petition. The Board cannot accept Chesapeake-Portsmouth's argument that because forfeiture cannot be imposed due to the one-year statute of limitations (Section 503(b)(3) of the Communications Act), the Board should not add the requested issues. The presence or absence of a forfeiture provision does not preclude the Board from considering the potentially disqualifying aspects of an applicant's conduct, including alleged rule violations. See *The Court House Broadcasting Company*, 21 FCC 2d 792, 18 RR 2d 616 (1970), and *United Television Company, Inc.*, 23 FCC 2d 493, 19 RR 2d 86 (1970). In fact, in no case would forfeiture be imposed as a lesser penalty in a situation warranting denial; thus, the absence of forfeiture as a sanction could in fact inure to the applicant's benefit since one possible sanction is removed.[7] See *Belk Broadcasting Company*, 29 FCC 2d 150, 21 RR 2d 989 (1971). Turning to the merits,[8] the Board is of the opinion that the Bureau's allegations raise sufficient questions of fact to warrant addition of the requested issues. Chesapeake-Portsmouth has not presented any arguments or circumstances to rebut the allegations set forth in Bashford's affidavit and the arguments made by the Bureau in its request. Consequently, the Board believes the issues in this proceeding should be enlarged to encompass the requested Rules 73.93 and 73.113 issues. See *Harvit Broadcasting Corporation*, 31 FCC 2d 876, 22 RR 2d 1062 (1971); and *Glen West*, 31 FCC 2d 803, 19 RR 2d 1131 (1970). Furthermore, we agree with the Bureau that evidence adduced under these issues may have relevance to the adequate supervision and control issue and may accordingly be considered thereunder.

6. Accordingly, IT IS ORDERED, That the motion for extension of time and acceptance of late filing, filed January 3, 1974, by Chesapeake-Portsmouth Broadcasting Corporation, IS GRANTED, and opposition, filed January 3, 1974, by Chesapeake-Portsmouth Broadcasting Corporation IS ACCEPTED; and

7. IT IS FURTHER ORDERED, That the request for acceptance of additional pleading and applicant's response to Broadcast Bureau's reply, filed January 28, 1974, by Chesapeake-Portsmouth, IS DENIED; and

8. IT IS FURTHER ORDERED, That the Broadcast Bureau's request for enlargement of issues, filed December 10, 1973, IS GRANTED, and that the issues in this proceeding ARE ENLARGED by the addition of the following issues:

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[7] Nor do we agree with the applicant's contention that if all the issues, except those requested herein, were resolved in the applicant's favor, the Commission would still be compelled to deny the license. The violations would warrant denial only if all the circumstances established that the applicant does not possess the qualifications necessary to be a Commission licensee.

[8] Chesapeake-Portsmouth's response to the Bureau's reply is an unauthorized pleading under our Rules. Accordingly, it is rejected. See Rule 1.45(c).

(a) To determine whether maintenance on and adjustment of the transmitter of WPMH(AM) have been undertaken by unauthorized personnel in violation of Section 73.93 of the Rules;

(b) To determine whether an unlicensed employee made log entries and whether revisions were made in recorded log entries by one who did not make the original entries in violation of Section 73.113 of the Rules.

9. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the added issues SHALL BE on the Broadcast Bureau, and the burden of proof SHALL BE on Chesapeake-Portsmouth Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-263

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 76 OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO DIVERSIFICATION OF CONTROL OF COMMUNITY ANTENNA TELEVISION SYSTEMS; AND INQUIRY WITH RESPECT THERETO TO FORMULATE REGULATORY POLICY AND RULEMAKING AND/OR LEGISLATIVE PROPOSALS	Docket No. 18891

MEMORANDUM OPINION AND ORDER

(Adopted March 13, 1974; Released March 18, 1974)

BY THE COMMISSION:

1. On June 24, 1970, the Commission adopted its *Notice of Proposed Rule Making and of Inquiry* (*Docket No. 18891*), 35 Fed. Reg. 11042, 23 FCC 2d 833. There the Commission proposed to deal with several matters concerning diversification of control of cable television. One of the matters was whether the Commission should enact a rule prohibiting daily newspapers from owning local cable television systems. In Paragraph 4 of the *Notice*, the Commission stated that in view of the fact that the question of cross-ownership of newspapers and local broadcast stations is under study in Docket No. 18110, the newspaper/cable portion of Docket No. 18891 will be considered at the same time as Docket No. 18110.

2. The deadline for filing comments in the newspaper/cable cross-ownership phase of Docket No. 18891 was in May 1971; the deadline for reply comments was in August 1971. As we stated in Paragraph 11, *Memorandum Opinion and Order in Docket No. 18110*, FCC 74-222, FCC 2d (Released March 7, 1974), although there are issues in common with certain of the questions pending in Docket 18110, there are enough unique considerations in the newspaper/cable proposal and other non-newspaper questions in Docket No. 18110 so that we will not totally consolidate these pending matters. On the other hand, there are enough common factors to warrant our consideration and final resolution of these issues at approximately the same time.

3. Although we are not now scheduling oral argument on the newspaper/cable matter, we believe it appropriate, in view of the time and the changes that have taken place in the industry since this proceeding was commenced, to reopen the docket for the filing of supplemental or new comments by all interested persons. All such comments should be filed by May 15, 1974. If deemed necessary, oral argument will be scheduled at a later date.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of
COMMUNITY COALITION FOR MEDIA CHANGE
Concerning Reconsideration of Complaint Against Station KGO–TV, San Francisco, Calif., Involving the Fairness Doctrine

MARCH 22, 1974.

Mr. MARCUS GARVEY WILCHER,
Chairman, Community Coalition for Media Change,
2233 Grant Street, No. 2,
Berkeley, Calif. 94703

DEAR MR. WILCHER: This is in reference to your request for reconsideration, dated October 23, 1973, of the Broadcast Bureau's letter to you of September 25, 1973 concerning your complaint against KGO–TV, San Francisco, California.

In your request for reconsideration, you state that the licensee's general manager had acknowledged, in a letter to Congressman Ronald Dellums, "a violation of the public interest" and "apologized for the station's insensitivity." You further state that the licensee's general manager misrepresented to Congressman Dellums that the news director on duty when the incident about which you complain occurred, was no longer employed by the television station. You contend therefore that "there are serious violations of both the fairness doctrine and section 308 of the Communications Act of 1934, as amended, as well as gross intentional misrepresentation to a United States Congressman in violation of the public trust," and request the Commission conduct "an investigation and hearing into the fitness of KGO–TV to hold a public license."

A summary of your complaint of July 24, 1973 and the Commission's letter of September 25, 1973 is appropriate here to place the sequence of events in perspective. In your July 24 complaint, you alleged that KGO–TV practiced racial discrimination in its news coverage by "the regular and continual portrayal of Black citizens negatively" and that on July 12, 1973 "KGO–TV insulted the citizens of the Bay area whose love and respect for Congressman Ronald V. Dellums has been clearly evidenced in the past," by broadcasting an interview with Congressman Dellums' daughter, concerning the arrest of the Congressman's son. You stated that although the interview "is not technically a violation of the personal attack rule" because Section 73.679(b)(3) exempts statements broadcast during a bona fide newscast, broadcast of the interview "is a clear violation of the spirit of that rule." You further stated that "we can only view this unusual display of 'news' without giving an offer to the Congressman to respond directly to these charges, as an intentional effort to besmirch the reputation and honesty of Congressman Dellums, because he is black and has some degree of power."

In its letter of September 25, the Broadcast Bureau stated that you had not submitted sufficient information to warrant Commission action at that time. To your request for reconsideration, you attach a letter to you, dated July 30, 1973, from Congressman Dellums in which he states that the licensee filmed an interview with him the day the licensee broadcast its interview with the Congressman's daughter, and that while the licensee broadcast the portion of the filmed interview in which he discussed his son, to his knowledge it never broadcast the part of his statement responding to his daughter's "allegations." Congressman Dellums further states:

> I was greatly dismayed at this manner of reporting as it left completely isolated, rather serious charges made by a 17-year-old girl who was extremely upset and who chose to direct that emotion at me.
>
> Since that time, I have been in direct communication with Mr. Russ Coughlan, General Manager for channel 7. Mr. Coughlan offered a personal apology on behalf of himself and the station management. He further indicated that at the time the film crew was dispatched to my daughter's home, he was not present at the station and thus had little control over those events. Mr. Coughlan further assures me that the news director who was on duty at the time is no longer with the station.

Congressman Dellums' letter stated that he "would not personally pursue the matter any further." You state that the news director referred to in the Congressman's letter was still employed by KGO-TV, and therefore charge that the licensee has violated Sections 308, 312(a)(2) and 312(a)(4) of the Communications Act of 1934, as amended.

Section 308 of the Communications Act authorizes the Commission to grant construction permits and licenses for radio stations, and requires applications for station licenses, modifications and renewals thereof, to conform to Commission regulations. You have provided no information or argument to indicate in what manner this provision is applicable to your complaint.

Section 312(a)(2) and 312(a)(4) state:

> The Commission may revoke any station license or construction permit—
>
> * * *
>
> (2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;
>
> * * *
>
> (4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act, or any rule or regu'ation of the Commission authorized by this Act or by a treaty ratified by the United States.

You have set forth no facts which would warrant any action under Section 312.

With respect to your contention that the licensee has violated the fairness doctrine, as stated in *Allen C. Phelps*, 21 FCC 2d 12, 13 (1969):

> Absent detailed and specific evidence of failure to comply with the requirements of the fairness doctrine, it would be unreasonable to require licensees specifically

> to disprove allegations such as those made here. The Commission's policy of encouraging robust, wide-open debate on issues of public importance would in practice be defeated if, on the basis of vague and general charges of unfairness, we should impose upon licensees the burden of proving the contrary by producing recordings or transcripts of all news programs, editorials, commentaries, and discussions of public issues, many of which are treated over long periods of time. Accordingly, although the Commission intends also to employ other appropriate procedures to insure compliance by licensees with the fairness doctrine . . . it has long been our policy normally to require that fairness doctrine complaints (a) specify the particular broadcasts in which the controversial issue was presented, (b) state the position advocated in such broadcasts, and (c) set forth reasonable grounds for concluding that the licensee in his overall programming has not attempted to present opposing views on the issue.

Neither your complain nor your request for reconsideration contains any information as to what statements broadcast by the licensee expressed a viewpoint on a controversial issue of public importance, or if such viewpoints were expressed, information that the licensee in its overall programming has failed to comply with the fairness doctrine.

With respect to your statement that broadcast of the interview with Congressman Dellums' daughter violated the "spirit" of the personal attack rule, the Broadcast Bureau's letter of September 25, 1973 stated, as you have acknowledged, that Section 73.679(b)(3) of the Commission's Rules states that the personal attack provision is not applicable to bona fide newcasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event. In any event, we note that you have provided the Commission with no information as to what statement constituted a personal attack upon the honesty, character, integrity or like personal qualities of Congressman Dellums.

In regard to your allegation that the licensee is guilty of "the gross misuse of a broadcast license, by distorting a 'news' story to discredit a Black Congressman," neither your complaint nor your request for reconsideration provides the Commission with any extrinsic evidence that the licensee ordered the news to be distorted or fabricated. For the Commission appropriately to commence action in the sensitive area of broadcast journalism, it must receive significant extrinsic evidence of such deliberate distortion. *Letter to Mrs. J. R. Paul*, 26 FCC 2d 591, 295 (1969). Accordingly, in the absence of such extrinsic evidence of deliberate distortion, staging or suppression of news, Commission action is not warranted.

Regarding alleged representations by the licensee to Congressman Dellums, you stated:

> Mr. Russ Coughlan, general manager of KGO–TV, stated to Congressman Ronald Dellums on or about July 12, 1973 (see Exhibit 1) that the News Director who permitted the gross misuse of a broadcast license, by distorting a "news" story to discredit a Black Congressman, was "no longer with the station."
>
> On July 13, 1973, a CCMC representative called KGO–TV to learn the name of the News Director who was "no longer with the station." Steve Skinner, who joined KGO–TV, as News Director on July 2, 1973 (ten days before the "news" story in question), informed the CCMC representative that he was still employed by KGO–TV, having replaced Mr. Pat Palillo, who departed on or about June 29, 1973.
>
> On August 6, 1973, a letter from the CCMC was sent to Mr. Coughlan asking for the name of the departed News Director. Mr. Coughlan did not answer the first letter. On August 20, 1973, the CCMC sent a second letter to Mr. Coughlan. On August 23, 1973, Mr. Coughlan's secretary responded to notify the CCMC that he

was out of town. (see Exhibits 2, 3, 4, and 6) A third CCMC letter was written on September 7, 1973. (see Exhibit 5)

In a letter from the licensee received March 12, 1974,[1] it stated that it had discussed the "apparent misunderstanding" on the matter which you raise with Congressman Dellums. The licensee further stated:

> Congressman Dellums was able to confirm that Mr. Coughlan's statement concerning the departure of Pat Polillo, the former KGO–TV News Director, was made in the context of a general discussion of the station's overall record of covering Congressman Dellums' activities over an extended prior period of time and was not intended to be limited to the specific incident involving the Congressman's son and the subsequent statements of his daughter, the incident with respect to which Mr. Wilcher complained. The point made by Mr. Coughlan to Congressman Dellums during their July, 1973, telephone conversation was that the Congressman's differences with news judgments reached while the KGO–TV News Department was under Mr. Polillo's stewardship were mooted by Mr. Polillo's departure.
>
> During their conversation last week, Congressman Dellums also expressed his belief that the matter was closed and that he was not seeking further remedial action from KGO–TV as a result of the station's broadcast of the news story concerning him last summer.

In view of the foregoing no further Commission action appears warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY.
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

AMERICAN BROADCASTING CO.,
ABC RADIO NETWORK,
New York, N.Y., March 8, 1974.

MILTON GROSS, Esq.,
Complaints and Compliance Division,
Federal Communications Commission,
Washington, D.C. 20554

DEAR MR. GROSS: I regret the lengthy delay in responding to your inquiry concerning KGO–TV but the station's General Manager. Mr. Russ Coughlan, experienced considerable difficulty in contacting Congressman Dellums during and immediately after the Congressional recess.

Fortunately, Mr. Coughlan was successful in reaching Congressman Dellums last week and had the opportunity to discuss the apparent misunderstanding during their telephone conversation.

Congressman Dellums was able to confirm that Mr. Coughlan's statement concerning the departure of Pat Polillo, the former KGO–TV News Director, was made in the context of a general discussion of the station's overall record of covering Congressman Dellums' activities over an extended prior period of time and was not intended to be limited to the specific incident involving the Congressman's son and the subsequent statements of his daughter, the incident with respect to which Mr. Wilcher complained. The point made by Mr. Coughlan to

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[1] A copy is attached hereto for your information.

Congressman Dellums during their July, 1973, telephone conversation was that the Congressman's differences with news judgments reached while the KGO–TV News Department was under Mr. Polillo's stewardship were mooted by Mr. Polillo's departure.

During their conversation last week, Congressman Dellums also expressed his belief that the matter was closed and that he was not seeking further remedial action from KGO–TV as a result of the station's broadcast of the news story concerning him last summer.

I trust that the foregoing explanation of the context in which Mr. Coughlan made his remark to Congressman Dellums will enable you to resolve the matter before you.

Very truly yours,

MARK D. ROTH,
Vice President and General Attorney.

FCC 74-260

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice
CONCERNING FAILURE OF BROADCAST LICENSEES
TO CONDUCT CONTESTS FAIRLY

MARCH 15, 1974.

FAILURE OF BROADCAST LICENSEES TO CONDUCT CONTESTS FAIRLY

Over the years, the Commission has received many complaints regarding the manner in which broadcast station licensees have conducted contests over the air. One result of these complaints was the issuance in 1966 of a Public Notice entitled, "Contests and Promotions Which Adversely Affect the Public Interest," 2 FCC 2d 464, 6 RR 2d 671. The 1966 Public Notice listed examples of various contests and promotions and stated that among the adverse consequences of some of them were: alarm to the public about imaginary dangers; infringement of public or private property rights or the right of privacy; annoyance or embarrassment to innocent parties; hazards to life and health; and traffic congestion or other public disorder requiring diversion of police from other duties. Contests and promotions having the adverse effects cited in that Notice and contests that are not fairly conducted or are misleadingly or falsely advertised continue to cause complaints, and short term renewals have been granted or other measures taken because of the manner in which contests have been advertised or conducted since the issuance of the 1966 Public Notice.[1]

The Commission has made clear in a number of public statements that a licensee's contests should be conducted fairly and substantially as represented to the public, and that a failure to do so falls short of the degree of responsibility expected of licensees. See *KOLOB Broadcasting Company* cited in footnote one.

In addition to the practices described in the 1966 Public Notice, the Commission believes that serious questions would be raised as to the sense of responsibility of a broadcast licensee who engages in the following practices: (1) disseminating false or misleading information regarding the amount or nature of prizes; (2) failing to control the contest to assure a fair opportunity for contestants to win the announced prizes; (3) urging participation in a contest, or urging persons to stay tuned to the station in order to win, at times when it is not possible to win prizes; (4) failing to award prizes, or failing to award them within a reasonable time; (5) failing to set forth fully and accurately the rules and conditions for contests; (6) changing the rules or conditions of a contest without advising the public or doing so promtply[2]; and (7) using arbitrary or inconsistently applied standards in judging entries. In some instances licensees, after carefully planning contests to avoid problems of this type as well as those listed above from the 1966 Public Notice, failed adequately to instruct employees in the procedures to be followed during the contest, or failed adequately to supervise their employees to assure that the instructions were carried out.

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[1] See, for example, *WCHS-AM-TV Corp.*, 8 FCC 2d 608, 10 RR 2d 445 (1967), *Henkin, Inc.*, 29 FCC 2d 40, 21 RR 2d 595 (1971), *KOLOB Broadcasting Co.*, 36 FCC 2d 586 (1972), *Qualitron Aero, Incorporated*, FCC 72-937, 25 RR 2d 679 (1972), *Baron Radio, Inc.*, FCC 72-1060, 25 RR 2d 1125 (1972), *Bremen Radio Co.*, 41 FCC 2d 595, 27 RR 2d 1453 (1973), *Greater Indianapolis Broadcasting Company, Inc.*, 44 FCC 2d 599, 28 RR 2d 1438 (1973), *Weis Broadcasting Company*, FCC 74-169, 29 RR 2d — (1974), and *Radio Chesapeake, Inc.*, FCC 74-170, 29 RR 2d — (1974).

In the past, as indicated above, we have on occasion granted probationary, short-term renewal of license for practices such as those listed above. However, the continuing practices of some licensees in conducting contests indicates that past measures may not have been sufficient. In the future we will consider designation of a renewal application for hearing when the circumstances appear to justify such action; e.g., a pattern of repeated failure to conduct contests and promotions fairly or to advertise them truthfully. We also will consider the feasibility of adopting rules in this area so that the full range of sanctions would be available to us.

Action by the Commission March 14, 1974. Commissioners Wiley (Chairman), Lee, Reid and Hooks.

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[2] For example, changes in the prizes to be awarded or in the bases for making the awards, or in the manner in which persons are to qualify for participation and what they are expected to do to compete.

FCC 74-259

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
CONTINENTAL CABLEVISION OF NEW HAMPSHIRE, INC.
Concerning Treatment by United Broadcasting Co., Inc., United Cable Co. of New Hampshire, Inc., and New England Telephone Co. of Multiple Applicants for CATV Pole Attachments

MARCH 13, 1974.

THOMAS W. SCANDLYN,
Assistant Vice President,
American Telephone and Telegraph Co.,
195 Broadway,
New York, N.Y. 10007

ROBERT D. BRUCE, Esq.,
New England Telephone & Telegraph Co.,
185 Franklin Street,
Boston, Mass. 02107

ROBERT F. CORAZZINI, Esq.,
Smith & Pepper,
1776 K Street, NW.,
Washington, D.C. 20006

GENTLEMEN: On December 19, 1973, Continental Cablevision of New Hampshire, Inc. (Continental) filed a Petition for Immediate and Ex-Parte Relief alleging unlawful and unreasonable collusive conduct on the part of United Broadcasting Company, Inc., United Cable Company of New Hampshire Inc. (United Cable) and New England Telephone Company (N.E. Telco). Continental requested that a hearing be designated to investigate the conduct of United Cable and N.E. Telco, particularly whether N.E. Telco's treatment of multiple applicants for CATV pole attachments is consistent with announced Bell System policy and this Commission's rulings. The subject Petition was treated as an informal complaint pursuant to the provisions of Section 208 of the Communications Act of 1934, as amended, and served on N.E. Telco. It should be noted that in the notice of complaint dated December 20, 1973, N.E. Telco was specifically advised that permitting further construction was at its own risk. Subsequently an answer dated December 31, 1973, was filed by N.E. Telco and comments were filed on January 10, 1974, by United Cable. Continental was requested to file comments as to N.E. Telco's answer and such comments were filed on January 17, 1974.

While it appears that Continental is not franchised to construct cable television plant in that portion of Manchester served by United Cable as of November 13, 1973, both Continental and United Cable are franchised to serve the remaining portion of the city. It also appears to be correct, as N.E. Telco alleges, that the latter will allow Continental access to the poles requested by it. However, the conditions and circumstances surrounding the grant of such access constitute the crux of the question before this Commission.

Continental truly faces a dilemma. N.E. Telco will not undertake action on its pole application unless Continental executes a pole attachment agreement. However, a condition of the pole attachment agreement is the acceptance by Continental of N.E. Telco's recently adopted "first-come, first-served" policy regarding "make ready" costs. In the meantime, United Cable, allegedly pursuant to appropriate contractual provisions, is proceeding to attach wire and hardware, in the portions of the city in which Continental and United Cable are franchised to compete. Under the first come, first serve principle the first applicant would bear the "make ready" costs for its single attachment and the second applicant would bear the "make ready" costs for the second attachment. The result is that the second applicant must pay higher costs than the first applicant.

The Commission, on previous occasions, has noted its basic concern over the telephone company's control of the pole lines (or conduit space) required for the construction and operating of CATV systems. Thus, in Docket No. 18509, *In the Matter of Application of Telephone Companies for Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems*, 21 FCC 2d 307, the Commission specifically stated at Pg. 327, para. 54 "Pole line attachment (or conduit) rights must be offered on a non-discriminatory basis where space for such facilities can reasonably be made available without impediment to the telephone company's obligation to supply non-CATV communications service to the public. The existence of technical limitations, which might prevent the leasing of space for additional lines on existing poles, should be convincingly shown by the telephone company and the exception be limited to the duration of the technical problem." Although Bell announced a generalized policy in Mr. Emerson's letter of October 27, 1969, to the effect that the Bell System companies will make all reasonable efforts to provide pole attachments to all legally qualified applicants at appropriate charges and believes that this alone is sufficient, the implementation of this policy by the individual Bell System operating companies as in the instant case raises questions as to whether this policy is being effectuated in a reasonable and non-discriminatory manner.

In the present instance, the facts are that application of the first come, first served doctrine will discriminate against Continental. The ability of United Cable to attach wire and hardware to poles not needing any "make ready" work, together with the additional cost to be incurred by Continental for its "make ready work" significantly impacts the competitive situation between Continental and United Cable in Manchester.

Therefore, it is our opinion that the conduct of United Cable and N.E. Telco appears to be unduly discriminatory and anti-competitive in nature. Further, such conduct does not appear to be in accord with the spirit of Mr. Emerson's October 27, 1969 letter which was represented as the present Bell System policy in Docket No. 18509 (*Section 214 Certificates*, 22 F.C.C. 2d 746 and 21 F.C.C. 2d 307, 322). Accordingly, we view such conduct as being contrary to AT&T's representations to the Commission in that proceeding, which representations we relied upon in electing not to adopt more stringent policies as the Department of Justice had urged upon us. We also stated then that we would be alert to any discriminatory or anti-competitive attempts discussed by the Department. (21 F.C.C. 2d at p. 324)

Accordingly, you are advised that, unless the aforementioned conduct is immediately terminated, appropriate action will be taken. You are requested to advise the Commission in writing within 5 days of the date of this letter of the actions you have undertaken in this matter.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

FCC 74-247

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of COSMOS BROADCASTING CORP. (WSFA-TV), MONTGOMERY, ALA. For Construction Permit	Docket No. 16984 File No. BPCT-3643

ORDER

(Adopted March 13, 1974; Released March 20, 1974)

BY THE COMMISSION:

1. Before us for consideration are: (a) a joint petition for waiver and extraordinary relief filed by respondents (WTVY, Inc. and Eagle Broadcasting Company) on April 23, 1973; (b) an opposition filed by Cosmos Broadcasting Corporation (Cosmos) on May 3, 1973; (c) comments filed by the Chief, Broadcast Bureau on May 2, 1973; and (d) a joint reply filed by the respondents on May 15, 1973.

2. Although the respondents' petition is entitled a "petition for waiver and extraordinary relief" it is in essence a petition for reconsideration of our April 14, 1971 order (28 FCC 2d 630) denying the respondents' application for review of the Review Board's determination of the UHF impact issue. In another order (33 FCC 2d 292, released on January 24, 1972), we denied a previous request by the respondents for reconsideration of the same action. As the current petition presents no significant showing affecting the merits of the actions taken in this proceeding it shall be denied.[1] We shall, in addition, deny the waiver request since good cause therefor has not been demonstrated.

3. Also before us for consideration are: (a) a joint application for review of a Supplemental Decision of the Review Board in this proceeding, FCC 73R-219, 41 FCC 2d 255, released on June 15, 1973, filed by the respondents on July 16, 1973; (b) an opposition filed by Cosmos on July 31, 1973; and (c) an opposition filed by the Chief, Broadcast Bureau on July 31, 1973.

4. Accordingly, IT IS ORDERED, That the joint petition for waiver and extraordinary relief, filed on April 23, 1973, and the joint application for review, filed on July 16, 1973, by WTVY, Inc. and Eagle Broadcasting Company ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] In the current petition the respondents contend, as a new consideration, that a denial of the petition would be inconsistent with our action in *Daily Telegraph Printing Company*, 40 FCC 2d 109 (1973). On the contrary, we find the circumstances of that case are distinguishable from those presented here, because, *inter alia*, the considerations of administrative finality were not so compelling in *Daily Telegraph* as they are in this instance.

FCC 74-262

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Public Notice to
LICENSEES OF ALL STANDARD BROADCAST STATIONS EMPLOYING DIRECTIONAL ANTENNAS

MARCH 14, 1974.

NOTICE TO THE LICENSEES OF ALL STANDARD BROADCAST STATIONS EMPLOYING DIRECTIONAL ANTENNAS

Section 73.69(a) of the Commission's Rules and Regulations requires, with minor exceptions, that each standard broadcast station utilizing a directional antenna have in operation at the transmitter an antenna monitor which is of a type approved by the Commission.

The requirement that such monitors be type approved was first established when the above section of the rules became effective on February 23, 1973. However, in recognition of the fact that immediate compliance with this requirement by all stations was not practicable, a Note appended to Section 73.69 set forth a schedule of dates wherein various categories of stations would be expected to have such monitors in operation.

This Notice concerns paragraph (2) of that Note, which states

> "Each station electing to utilize license operators other than first class radio telephone operators for routine transmitter duty (see § 73.93) shall meet this requirement by June 1, 1974".

It has come to the Commission's attention that the sources of supply of type approved monitors may be limited to the extent that the licensees of some stations required to have type approved monitors by June 1, 1974, may be unable, even by the exercise of due diligence, to obtain delivery and install approved monitors by that date.

Accordingly, pending further notice from the Commission, the licensee of a station who is required to, but fails to have a type approved monitor installed and operating by June 1, 1974, will not be held accountable for failure to comply with the rule if, by that date, he has placed and has received confirmation of an order for a type approved monitor. Under such circumstances, a copy of such order and confirmation must be furnished the Commission in Washington, and an additional copy maintained in the station's files, and made available for inspection on request by a field engineer of the Commission.

Action by the Commission March 13, 1974. Commissioners Wiley (Chairman), Lee, Reid and Hooks.

FCC 73-1184

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
INQUIRY INTO THE EMPLOYMENT POLICIES AND PRACTICES OF CERTAIN BROADCAST STATIONS LOCATED IN NORTH CAROLINA AND SOUTH CAROLINA

MEMORANDUM OPINION AND ORDER

(Adopted November 14, 1973; Released December 4, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING.

1. The Commission has before it for consideration responses to its inquiry into the employment policies and practices of forty nine broadcast stations located in North Carolina and South Carolina.[1]

2. By letters dated December 8, 1972, the Commission requested the licensees of a number of broadcast stations located in North Carolina and South Carolina to explain why their employment records were consistent with the rules governing equal employment opportunity. See 47 C.F.C. 73.125, 73.301, 73.599, 73.680, 73.793. Each station had eleven (11) or more full-time employees and was located in an area with a minority population of at least five (5) percent. Further, each station's annual employment profile report (FCC Form 395) indicated that it either: (a) employed no minorities in 1971 and 1972; (b) had a decline in minority employees from 1971 to 1972; (c) employed no women in 1971 and 1972; (d) had a decline in women employees from 1971 to 1972; or (e) showed a combination of the employment characteristics set forth in (a), (b), (c), and (d).[2]

3. Based upon our analysis of each licensee's response, we are satisfied that further inquiry into their employment policies and practices

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[1] The stations are:

WAIR
WAME
WAYS
WBAG & WBAG-FM
WBUY & WLXN(FM)
WCHL
WCOG
WCRS & WCRS-FM
WDIX & WDIX-FM
WDNC & WDNC-FM
WELP & WELP-FM
WELS
WESC & WESC-FM
WGBR & WEQR(FM)
WGNI & WAAV(FM)
WGUS
WHKY & WHKY-FM
WIRC & WXRC(FM)
WIST
WJNC & WRCM(FM)
WJRI
WLOE & WEAF(FM)
WMFR & WMFR-FM
WNCT & WNCT-FM
WPTF & WPTF-FM
WSKY
WSTP & WRDX(FM)
WVOT & WVOT-FM
WECT(TV)
WIS-TV
WWAY-TV

[2] Two of these stations, WLOE and WEAF(FM), were exempt from responding when it was discovered that the annual employment profile reports had been filed by previous licensee. Station WAYS was also exempted when an amended annual employment profile report disclosed that it did not fall within the Commission's criteria—that is, there was no reduction of women employees, but rather a reassignment of some employees from the station to the licensee's central office. Further, WIS-TV was not required to respond to the inquiry since information filed in Section VI of the renewal application disclosed that there was no reduction in black employees, but, rather, an increase in the number of such employees.

is unnecessary at the present time. However, we are of the opinion that the licensees of WAME, WCOG, WGUS, WIST, WJRI, WJTF and WPTF-FM, WSKY, WECT-TV and WWAY-TV must place additional emphasis on seeking and encouraging minority and/or women applicants to apply for positions at their stations. Each of these stations had in its employ 12 or more persons in 1972 and each station had several opportunities to hire for fulltime positions during the 12 month period preceding the pay period covered by the filing of their 1972 annual employment report. However, each station still employs, few, if any, minority and/or women individuals.

4. Compliance with our rules and policies governing equal employment opportunity cannot, of course, be judged alone by whether or not a licensee employs minority and/or women applicants. (Indeed, each licensee's compliance posture must be judged by reviewing the contents of its equal employment opportunity program, the extent of its adherence to that program, and its reasonable and good faith efforts to make that program work.) However, statistics can tell us something about a licensee's employment policies and practices. Accordingly, under circumstances where a licensee employs no minorities and/or women, or employs minorities and/or women in insignificant numbers, the licensee should maintain systematic communication with minority and/or women groups, organizations, leaders, etc. so that they will know that job opportunities are available to all persons on a nondiscriminatory basis. Here, the responses of the licensees of the stations noted in Paragraph 3 above contain no indication of actual discriminatory motive. However, their responses suggest that their recruitment efforts may be the primary cause of their poor minority and/or women employment profile. We believe, therefore, that the licensees of these stations must place additional emphasis on seeking qualified or potentially qualified minority and women applicants each time a job opening occurs. Accordingly, we have decided to grant the license renewals for these stations subject to the conditions set forth below. (See Paragraph 7). It is noted that, due to other unresolved problems, action on the license renewal applications for Stations WAME, WCOG and WWAY-TV cannot be taken at this time. If these problems are resolved in favor of the licensees, the renewals for WAME, WCOG, WWAY-TV are to be granted subject to the conditions set forth in Paragraph 7 below. In the meantime, the licensees of WAME, WCOG and WWAY-TV are to comply with these conditions which are designed to assure us that they advise the affected groups (i.e., minorities and women) that job opportunities are available to all persons on a nondiscriminatory basis and to give us a basis for judging their future performance.

5. In view of the above, we conclude that the public interest, convenience and necessity will be served by a grant of the applications for renewal of licenses for the following stations: WAIR, WBAG-AM-FM, WBUY, WLXN(FM), WCHL, WDNC-AM-FM, WELP-AM-FM, WELS, WGNI, WAAV(FM), WGUS, WHKY-AM-FM, WIRC, WXRC(FM), WIST, WJNC, WRCM(FM), WJRI,

WMFR-AM-FM, WNCT-AM-FM, WPTF-AM-FM, WSKY, WSTP, WRDX(FM), WVOT-AM-FM, WECT(TV).[3]

6. Accordingly, IT IS ORDERED, That the following applications for renewal of licenses are granted for the remainder of the regular license term for the stations noted:

Call letters and locations:	*Applicant*
WAIR—Winston-Salem, N.C	Holiday Broadcasting Corp.
WBAG, WBAG-FM—Burlington-Graham, N.C	Burlington-Graham Broadcasting Co.
WBUY—Lexington, N.C	Davidson County Broadcasting Co.
WLXN(FM)—Lexington, N.C	Omar G. Hilton and Greeley N. Hilton d.b.a. Davidson County Broadcasting Co.
WCHL—Chapel Hill, N.C	Village Broadcasting Co., Inc.
WDNC, WDNC-FM—Durham, N.C	Durham Radio Corp.
WELS—Kinston, N.C	Farmers Broadcasting Service, Inc.
WELP, WELP-FM—Easley, S.C	Pickens County Broadcasting Co.
WGNI, WAAV(FM)—Wilmington, N.C	New Hanover Broadcasting Co.
WHKY, WHKY-FM—Hickory, N.C	Catawba Valley Broadcasting Co., Inc.
WIRC, WXRC(FM)—Hickory, N.C	Foothills, Broadcasting, Inc.
WJNC, WRCM(FM)—Jacksonville, N.C	Onslaw Broadcasting Corp.
WMFR, WMFR-FM—High Point, N.C	Radio Station WMFR, Inc.
WNCT—Greenville, N.C	Roy H. Park Radio, Inc.
WSTP, WRDX(FM)—Salisbury, N.C	WSTP, Inc.
WVOT, WVOT-FM—Wilson, N.C	Wilson Radio Co., Inc.

7. IT IS FURTHER ORDERED, That the applications for renewal of licenses filed by Broadcasting Associates of America, Inc. for Station WGUS; Statesville Broadcasting Company, Inc. for Station WIST; WJRI, Inc. for Station WJRI; Durham Life Broadcasting Service for Stations WPTF & WQDR(FM); Radio Asheville, Inc. for Station WSKY; and Atlantic Broadcasting Corporation for Station WECT-TV are granted for the remainder of their regular license term subject to the conditions that the licensees:

(i) Submit to the Commission within 30 days a list of local minority and women's organizations, agencies, community leaders, schools and colleges with which they will maintain systematic communication each time their stations seek to fill a job position: and

(ii) Submit to the Commission, concurrent with the filing of their 1974 and 1975 annual employment reports (FCC Form 395), a detailed statement on the affirmative action undertaken to seek and encourage minority and women applicants for each job opening filled during each twelve (12) month period preceding the pay period covered by the filing of their station's 1974 and 1975 annual employment reports, respectively, with minority and female persons designated.

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[3] The Commission makes no findings at this time on the applications for renewal of licenses for Stations WDIX-AM-FM, WESC-AM-FM, WGBR, and WEQR(FM) since other non-related matters remain to be resolved.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order to each of the licensees designated in Paragraphs 5 and 6 above, and to the licensees of Stations WAME, WCOG and WWAY-TV.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74D-5

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of
GUY S. ERWAY, WEST PALM BEACH, FLA.
For a Construction Permit

Docket No. 19601
File No. BPH-7137

APPEARANCES

George R. Borsari, Jr. and *Leonard S. Joyce* on behalf of Guy S. Erway; and Joseph Chachkin on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE
CHESTER F. NAUMOWICZ, JR.

(Issued January 30, 1974; Effective March 22, 1974, Pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. By order released October 13, 1972, the Commission consolidated the above-captioned application for hearing with the mutually exclusive applications of Sandpiper Broadcasting Co., Inc., Sun, Sand and Sea, Inc., and Marshall W. Rowland. None of the issues designated by the Commission related to the basic qualifications of Erway, and, for the reasons noted at paragraph 2, *infra*, all of the issues designated by the Commission have become moot. However, by order of the Review Board released April 4, 1973 the following issues were added with respect to the Erway application:

> (a) To determine whether Guy S. Erway has engaged in trafficking in broadcast licenses; and if so, to determine the effect of such misconduct on the basic or comparative qualifications of the applicant to be a broadcast licensee;
>
> (b) To determine whether Guy S. Erway has violated the provisions of Section 1.514 and/or 1.65 of the Commission's Rules by failure to report the existence of his application, filed January 23, 1970, for an FM station in Montour Falls, New York, and subsequent changes in the status of that application; and if so, to determine the effect of such violation on the applicant's basic or comparative qualifications to be a Commission licensee.

2. By order released May 2, 1973 the presiding Judge granted the petition of Sun, Sand and Sea, Inc. to dismiss its own application. On August 28, 1973, the remaining three applicants filed a Joint Request for Approval of Agreement contemplating the grant of the Sandpiper application, dismissal of the Erway and Rowland applications, and reimbursement by Sandpiper to Erway and Rowland of certain specified expenses. By order of the presiding Judge released December 7, 1973 the three applications were severed, and the Erway and Rowland

applications were dismissed. However, both Erway and Rowland were retained in hearing status pending resolution of issues relating to their basic character qualifications.[1]

3. The applicants had previously published notice of the hearing and notified the Commission thereof pursuant to the governing statute and rule. Hearing on the issues quoted at paragraph 1, *supra*, was held on November 19, 1973, and the record was closed by order of the presiding Judge released December 10, 1973. Proposed findings of fact and conclusions of law were filed by Erway and the Broadcast Bureau on January 28, 1974.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

4. In its proposed findings of fact and conclusions of law the Broadcast Bureau views the record as warranting the findings and conclusions that Erway did not traffic in broadcast licenses; that he did violate Rules 1.514 and 1.65; but that the circumstances surrounding the rule violations are not such as to warrant his absolute disqualification as a broadcast licensee. The presiding Judge is in agreement with both the proposed findings of fact and proposed conclusions of law of the Broadcast Bureau. Hence, the Broadcast Bureau's Proposed Findings of Fact and Conclusions of Law are adopted, and are incorporated into this Initial Decision. It is concluded that the record made on the issues quoted at paragraph 1, *supra*, does not present a barrier to approval of the applicants' Joint Request for Approval of Agreement insofar as that agreement relates to the Erway application.

5. It is further found and concluded that the documents associated with the applicants' August 28, 1973 Joint Request for Approval of Agreement establish that Guy S. Erway has complied with the provisions of Rule 1.525, and has demonstrated an expenditure of $14,579.89 in connection with the subject application.

Accordingly, IT IS ORDERED, That unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion pursuant to Rule 1.276, the Joint Request for Approval of Reimbursement of Expenses, etc. filed by Guy S. Erway, Sandpiper Broadcasting Co., Inc., and Marshall W. Rowland on August 28, 1973 IS GRANTED, insofar as it relates to reimbursement of $14,579.89 of expenses by Sandpiper Broadcasting Co., Inc. to Guy S. Erway; and

IT IS FURTHER ORDERED, That proceedings in Docket No. 19601 ARE TERMINATED.

CHESTER F. NAUMOWICZ, JR.,
Administrative Law Judge,
Federal Communications Commission.

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[1] By Initial Decision released December 10, 1973, the Sandpiper application was granted.

FCC 74-271

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition of
HORACE P. ROWLEY III
Concerning Reconsideration of Request for Declaratory Ruling Involving the Fairness Doctrine

MARCH 13, 1974.

HORACE P. ROWLEY, III, Esq.,
416 East 81st Street,
New York, N.Y. 10028

DEAR MR. ROWLEY: This is in reference to your Petition for Reconsideration of the June 6, 1973 Commission ruling which denied your request to issue the following declaratory ruling:

> If CBS broadcasts Eric Sevareid's views on an issue of public importance during the *CBS Evening News with Walter Cronkite,* then the public has a right against CBS to receive a conflicting view back-to-back during the same program.

You state that the Commission's ruling violates the "public interest" standard of Section 315(a); that the ruling did not consider the Supreme Court holding in *CBS* v. *DNC*, 412 U.S. 94 (1973) in reaching its decision; that the ruling appeared to misunderstand the scope of the proposed ruling in that you had only intended the proposed ruling to apply to the *CBS Evening News* and not other CBS News programs; that CBS's practice of only broadcasting Mr. Sevareid's commentaries on the *CBS Evening News* failed to afford the public a "reasonable opportunity" to hear contrasting views; and that CBS has provided Mr. Sevareid with a contractual right of access to the *CBS Evening News* program and has denied that type of access to spokesmen with opposing views.

We stated in our June 6 ruling that licensees have discretion in discharging their fairness doctrine obligations; and that a station need not present contrasting views on the same program as long as an opportunity is afforded those views in the station's overall programming. In conclusion we stated the following:

> The critical issue in fairness doctrine cases is whether opposing spokesmen are given a reasonable opportunity for the expression of their viewpoints in the station's or network's overall programming, not whether opposing sides of a topic are presented in the same program. The Commission does not agree with the contention that the achievement of fairness requires the presentation of opposing views on the same program. Thus we reject your contentions that back-to-back commentaries on CBS Evening News are required in order to "afford reasonable opportunity" under Section 315 of the Communications Act.

We disagree with your contention that the June 6 ruling violates the "public interest" standard. We believe that allowing licensees discretion in meeting their obligations under the fairness doctrine is in the best interest of the public and furthers the goal of encouraging "robust, wide-open debate"[1] over broadcast facilities licensed by the government. We again note that under Section 326 of the Communications Act the Commission is prohibited from censoring broadcast matter. Further, the ruling did not misunderstand the scope of your proposed rule. It specifically rejected your contention that "back-to-back commentaries on CBS Evening News are required in order to 'afford reasonable opportunity' under Section 315 . . ." The ruling also stated that the fairness doctrine is incompatible with any suggestion that a program must contain contrasting views within the same show or format.

You contend that the June 6 ruling did not consider the Supreme Court ruling in *CBS* v. *DNC*, supra. That is correct. We believe that the issues in the two cases are not similar; that the holding in the CBS case does not support your proposed "declaratory ruling"; and that you have furnished no persuasive information to show the relevance of the *DNC* case to your request.

We have considered the merits of your Petition for Reconsideration and conclude that you have failed to present any information which warrants reversal of our June 6, 1973 ruling.

Accordingly, for the reasons set forth above, your Petition for Reconsideration IS DENIED.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] See *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964).

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
HARVEY S. BRYCE
Concerning the Fairness Doctrine Involving Station KBON

MARCH 22, 1974.

Mr. HARVEY S. BRYCE,
120 126 North F Street,
San Bernardino, Calif. 92410

DEAR MR. BRYCE: This is in reference to your complaint against Radio Station KBON. With your complaint you enclosed copies of correspondence between yourself and Station KBON (including a copy of a letter from Station KBON refusing you air time) concerning an apparent disagreement over use by the station of the term "Twin Cities" in referring to San Bernardino and Riverside, California, and copies of three newspaper items, two letters to the editor of the Sun Telegram and one article from the Sun, all referring to the "Twin Cities" label issue. You stated that your constitutional right of freedom of speech had been violated by Station KBON by its failure to answer your correspondence and its failure to afford you air time to voice your own opinion.

In response to a Commission inquiry, Station KBON submitted a letter dated October 24, 1973, a copy of which was forwarded to you. In that letter the licensee stated that Riverside and San Bernardino were "unofficial sister cities"; that the cities have joint council meetings; that the mayors of both cities were "very much in favor" of the "Twin Cities" label; and that there was no controversy over the use of the term "Twin Cities" in reference to San Bernardino and Riverside.

In reply to Station KBON's response, you sent to the Commission a letter dated November 19, 1973, enclosing correspondence between yourself and Station KBON dated February 6, 1973 wherein you requested air time to present a "text statement" on an upcoming mayoral election, a copy of that "text statement," and a newspaper article concerning your donation to the San Bernardino City Hall of a collection of pictures of former mayors of San Bernardino. Your letter of November 19, 1973 contained no information whatever on the "Twin Cities" dispute.

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not direct broadcasters in the selection or presentation of specific programming.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming, which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue.

Initially, whether or not any given problem is a controversial issue of public importance is determined by the individual licensee. Your attention is invited to paragraph 10 of the *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949), (included as Appendix A to the enclosed Public Notice of July 1, 1964), which states, in part:

> . . . The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, or whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person making the request . . .

Generally, the Commission will review a licensee's decisions pursuant to the fairness doctrine only to determine whether the licensee has acted reasonably under all the facts and circumstances presented.

The licensee stated its judgment, as noted above, that no controversy exists as to the use of the term "Twin Cities" in reference to San Bernardino and Riverside. In support of your contention that there is a controversy you submit only your own statements plus a newspaper feature article and two letters to the editor, one of which was written by you. As the District of Columbia Court of Appeals has said:

> Merely because a story is newsworthy does not mean that it contains a controversial issue of public importance. Our daily newspapers and television broadcasts alike are filled with news items which good journalistic judgment would classify as newsworthy, but which the same editors would not characterize as containing important controversial public issues. *Healey* v. *FCC*, 460 F. 2d 917, 922 (D.C. Cir. 1972).

In view of the foregoing, we cannot conclude that the licensee was unreasonable in its judgment that applying the term "Twin Cities" to San Bernardino and Riverside, California is not a controversial issue of public importance. Your reply to the station's response to our letter of inquiry did not take issue with the licensee's judgment. Accordingly no further action on your complaint is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
ALLEN MASER
Concerning the Fairness Doctrine Involving Station WSIL-TV, Harrisburg, Ill.

MARCH 21, 1974.

Mr. ALLEN MASER,
RR 8 Box 174 Lot # 70,
Carbondale, Ill. 62901

DEAR MR. MASER: This is in reply to your letters of December 5, 1973 and January 6, 1974, concerning Station WSIL-TV, Harrisburg, Illinois. In your letter of December 5, 1973, you state that on that date "an election was held on the campus of Southern Illinois University . . . for a student Trustee, who will sit as a student representative to the Board of Trustees of Southern Illinois University"; that on the program, "Cactus Pete", Station WSIL-TV broadcast a letter from one of the candidates, or a member of his staff, seeking publicity; that after reading the letter the show's moderator said that publicity would not be given to the candidate; that, however, by reading the letter over the air, the station gave publicity to the candidate; and that when you contacted the station it did not offer to read any other candidate's statement on the air although it agreed that "the other candidates were entitled to submit statements to the station." You claim that the stations actions violated the fairness doctrine and the political editorializing rule.

In response to your letter of December 5, 1973, the Commission sent you a letter dated January 3, 1974, which explained Commission regulations and procedures regarding the fairness doctrine and political broadcasts, and informed you that you had not provided sufficient information for the Commission to determine "whether the election in question or the issues therein constituted controversial issues of public importance in the area of the station's coverage, or, if a controversial issue of public importance was involved, whether that broadcast constituted one side of that issue"; that "Section 315 of the Communications Act and the Commission's rules thereunder pertaining to candidates applies only to 'legally qualified candidates for public office' "; and that it did not appear "that the office of student Trustee is a public office": that the Commission's political editorializing rule refers *only* "to *editorials* endorsing or opposing legally qualified candidates for public office"; and that the broadcast about which you complained did not "appear to have constituted an editorial as defined by the rule."

In a reply to our response dated January 6, 1974, you state that the election for student Trustee "was, in fact, a public election, mandated by the legislature of the State of Illinois"; that "reading the letter on the air without giving the other candidates the opportunity to have their letters read in the same manner" constituted "presenting only one viewpoint of a multi-faceted election"; and that there was some contact between "Cactus Pete" and your opponent concerning the reading of his letter on the air.

As explained in the informational letter attached to our January 3 letter, where a fairness doctrine complaint is made to the Commission, the Commission expects a complainant to submit specific information including, among other points, (1) the specific issue of a controversial nature of public importance broadcast (complainant should include an accurate summary of the views broadcast and presented by the station); (2) the basis for the claim that the issue was a controversial issue of public importance, either nationally or in the station's service area at the time of the broadcast; and (3) reasonable grounds for the claim that the station broadcast only on one side of the issue in its overall programming.

You have not specified any issue, nor have you provided any basis for the claim that the election was a controversial issue of public importance in the service area of Station WSIL–TV.

Your statement that the reading of your opponent's letter by Station WSIL–TV constituted "presenting only one viewpoint of a multi-faceted election", without a summary of the views in the letter which was broadcast, and without any information to support the contention that the election itself or the issues involved were controversial issues of public importance, is insufficient for the Commission to make a determination on whether or not a fairness doctrine violation has occurred.

We are enclosing for your information copies of the Commission's Public Notices of August 7, 1970 and March 16, 1972, entitled "Use of Broadcast Facilities by Candidates for Public Office." These documents contain the provisions of Section 315 of the Communications Act, amendments enacted by the Congress, the Commission's rules, regulations and guidelines promulgated thereunder, and representative rulings and interpretations. This material should serve to inform you, generally, as to the applicability and requisites of Section 315 in given situations.

If a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting station, Section 315 of the Communications Act states that the licensee must afford "equal opportunities" to all other such candidates for that office in the use of such broadcasting station. In this case there was no appearance by a candidate, but rather the reading on the air of a letter from a candidate. Therefore, even if the office of student Trustee were a public office, the "equal opportunities" provision of Section 315 would not have been applicable. (See enclosed "Political Broadcast Primer," Q. & A. III A. 1)

In view of the above, it appears that no further Commission action is warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

FCC 74-268

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (SANFORD, MAINE; ROCHESTER, N.H.) } Docket No. 19877

REPORT AND ORDER

(Proceeding Terminated)

(Adopted March 13, 1974; Released March 18, 1974)

BY THE COMMISSION:

1. This proceeding, begun by Notice of Proposed Rule Making issued November 29, 1973, proposes a substitution of FM Channel 244A (now assigned to Sanford, Maine) to Rochester, New Hampshire, for FM Channel 280A and also would substitute Channel 221A for Channel 244A at Sanford. Two comments were filed in response to the Notice: one comment by J. Sherwood, Inc., applicant for a new FM broadcast station at Rochester and the other comment was by Southern Maine Broadcasting Corporation, licensee of Radio Station WSME, Sanford, Maine, who has on file an application for an FM station at Sanford on Channel 244A.

2. The Sherwood comments were in complete support of the proposed substitution of channels because it would correct a short spacing problem preventing the construction of an FM station at Rochester. Southern Maine's comment neither supports or opposes the substitution of channels, and states that it will amend its pending application on Channel 244A to specify Channel 221A after the effective date of this Report and Order.

3. Sherwood asks that expedited action be taken in this matter because Rochester is an industrial community and a new FM station would provide residents with greater media coverage on the issues of importance to the area. We have considered the comments of the party in the light of the proposals set forth in the Notice and find that the assignments proposed to be in the public interest and they are hereby adopted.

4. In view of the foregoing and pursuant to authority in Sections 4(i), 5(d)(1), 303 and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective April 29, 1974, the FM

Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED to read with respect to the cities listed below:

City:	*Channel No.*
Sanford, Maine	221A
Rochester, N.H	244A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-269

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENT, FM BROADCAST STATIONS (WICHITA FALLS, TEX.)	Docket No. 19876

REPORT AND ORDER

(Proceeding Terminated)

(Adopted March 13, 1974; Released March 18, 1974)

BY THE COMMISSION:

1. This proceeding, begun by Notice of Proposed Rule Making issued November 20, 1973, involves the deletion of FM Channel 236 at Wichita Falls, Texas. The only comment in support of the proposed deletion was filed by KAMC–Radio, Inc., licensee of Station KAMC (FM), Arlington, Texas. No comments in opposition were filed.

2. As set forth in the Notice, Wichita Falls has four FM assignments. One is on Channel 225 for which an application for construction permit is pending; Station KLUR(FM) operates on Channel 260; and Station KNTO(FM) which is currently operating on Channel 236 but has been granted a construction permit to operate on Channel 277. Station KAMC(FM), Arlington, Texas, operating on Channel 235, is short-spaced to Channel 236 at Wichita Falls. Because of the short-spacing, Station KAMC(FM) is restricted under our rules to facilities not to exceed 50 kW in ERP. The proposed deletion of Channel 236 which cannot be fully utilized at Wichita Falls would remove the restrictions and permit KAMC(FM) to operate with maximum facilities as proposed in its tendered application on Channel 235.

3. Because of the short spacing problem outlined above, we find the deletion of the channel to be in the public interest and the proposal set forth in the Notice is hereby adopted. However, Station KNTO–FM will be permitted to continue operation on Channel 236 under a special temporary authorization until it receives program test authority to operate on Channel 277.

4. In view of the foregoing and pursuant to authority in Sections 4(i), 5(d)(1), 303 and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective April 29, 1974, the FM Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED to read with respect to the city listed below as follows:

City:	*Channel No.*
Wichita Falls, Tex	225, 260, 277

5. IT IS FURTHER ORDERED, That special temporary authority IS CONFERRED to Station KNTO–FM to continue operation on Channel 236 with its presently licensed facility pending receipt and Commission action on FCC Forms 302 for license to cover construction permit (BPH–8307) which authorized the construction of changed facilities on Channel 277.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-278

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
FOX RIVER COMMUNICATIONS, INC.
Concerning Contest Conducted by Station
WKAU, Kaukauna, Wis.

MARCH 14, 1974.

FOX RIVER COMMUNICATIONS, INC.,
% Richard D. Dudley,
Radio Station WKAU,
Box 29,
Wausau, Wis. 54401

GENTLEMEN: This is in reference to the "Listen to the Music" contest conducted by Station WKAU, Kaukauna, Wisconsin.

Based on the information you provided to the Commission, it appears that the contest began in mid or late July and ended on September 2, 1973. The format of the contest involved the mixing of three sections of three records. Contestants had to identify the songs and artists. The station announcer stated at contest time that he was going to accept a specific call in sequence such as the second, third or other call. If the designated caller could identify the selections, the prize awarded was a record album of nominal value from a supply that had been sent to the station for promotional purposes by record companies.

Your statements indicate that about ten days after the contest began, your announcers noticed that eight to ten listeners, apparently very young, were playing the contest each time it was held, dialing just as or even before the announcer asked for calls. Six or seven of your announcers made false statements to these repeating contestants. For example, the announcer would state that caller number four would have a chance to identify the three selections. When the fourth caller was recognized as one of the repeating contestants, the announcer would disqualify that person by stating that he or she was the second or third caller. In addition, your program director attempted to solve the problem by advising repeating contestants over the phone that they could participate only once per day, although this limitation was not stated on the air until after these telephone conversations. These practices were known to your general manager as well as the program director.

You state that ". . . this contest, even though in the nature of a game played for prizes of only nominal value, was not conducted entirely properly," noting that the public should have been notified of the changes in the rules of the game, and that procedures for handling the repeating callers were improper. You also indicate that you have reprimanded the persons responsible and adopted procedures designed to assure that the problem will not arise again.

The Commission has stated that any contests broadcast by a station should be conducted fairly and substantially as represented to the public and that a failure to do so falls short of the degree of responsibility expected of licensees, *KOLOB Broadcasting Co.*, 36 FCC 2d 586 (1972). Here you made false statements over the air in order to eliminate certain contestants, and changed the rules of the contest before advising the public of those changes. The Commission believes, therefore, that you have not exercised the degree of responsibility expected of you and admonishes you for this shortcoming.

By Direction of the Commission,
Vincent J. Mullins, *Secretary*.

FCC 74-249

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

AMENDMENT OF PART 2 OF THE COMMISSION'S RULES TO PROVIDE ALLOCATIONS IN THE 40 GHz TO 300 GHz BANDS FOR TERRESTRIAL SERVICES	Docket No. 19973

NOTICE OF PROPOSED RULE MAKING

(Adopted March 13, 1974; Released March 19, 1974)

BY THE COMMISSION:

1. Notice of proposed rule making in the above entitled matter is hereby given.

2. Prior to 1971 the frequencies above 40 GHz were essentially unallocated. On June 7 of that year a World Administrative Radio Conference for Space Telecommunications (WARC-ST) was convened in Geneva, Switzerland, by the International Telecommunications Union (ITU). The WARC-ST was convened for the purpose of allocating frequencies for space radio services and radio astronomy. Among the frequencies allocated were a number of bands between 40 GHz and 275 GHz. In its Report and Order of February 14, 1973 (38 FR 5562, March 1, 1973; FCC 73-169), terminating the proceedings in Docket No. 19547, the Commission amended the Table of Frequency Allocations (§ 2.106 of its Rules and Regulations) to conform as nearly as was practicable to the ITU Regulations as revised by the WARC-ST. With the exception of adding one footnote relating to radio astronomy and of making an interim allocation to the amateur and experimental services in bands not allocated to space services, the Commission adopted the same allocations above 40 GHz as had the WARC-ST.

3. The proceedings in Docket No. 19547 made allocations only as necessary to accommodate space services and radio astronomy, and, since the whole of the 40 to 300 GHz band had previously been unallocated (except for a small band for radio astronomy), there are currently no allocations in the band for regular terrestrial services. Although there is now little demand for frequencies above 40 GHz, a general allocation table up to 300 GHz including terrestrial services is desirable for future planning purposes and orderly growth as technology develops. In its Notice of Proposed Rule Making of July 14, 1972 (37 FR 15714, August 4, 1972; FCC 72-629), initiating the proceedings in Docket 19547 the Commission stated that it intended at some future time to initiate rule making to develop allocations for terrestrial services in this band. This proceeding is hereby initiated to make such allocations.

4. The proposed allocation table (see Appendix) was developed in coordination with the IRAC of the Office of Telecommunications Policy, and, as was generally the case for space services in this range, the proposed terrestrial allocations will be shared co-equally between Government and non-Government services.

The allocations for space services will not be changed from those currently in force. With certain exceptions, bands presently allocated to space services are being allocated on a shared basis[1] to their terrestrial service counterparts. For example, aeronautical mobile is being added to aeronautical mobile-satellite bands, fixed to fixed-satellite bands, etc. Exceptions to this general rule include bands allocated to the inter-satellite service, for which there is no direct terrestrial counterpart, and bands allocated to the broadcasting-satellite service. In both of these cases, we are proposing to add the terrestrial fixed and mobile services to the bands involved. Also, terrestrial mobile as well as fixed is being added to fixed-satellite bands. No terrestrial radiocommunications services are being proposed in bands allocated to earth exploration-satellite and space research or in passive (receive-only) bands allocated to space research and radio astronomy. Some of the bands not currently allocated to space services are being proposed for allocation to the radiolocation service in response to specific Government needs. In keeping with our general sharing philosophy, these radiolocation bands will also be allocated to the non-Government radiolocation service and to the amateur service on a secondary basis. The remaining bands above 40 GHz which are not presently allocated to space services are to be allocated to the terrestrial fixed and mobile services.

5. The format described in Section 2.105 of the existing rules has been used in presenting the proposed amendments to the Allocation Table as set forth in the Appendix. Not shown in the appendix are columns 1 through 4 of the Table which pertain to international allocations and which are unaffected by this proceeding. Columns 5 through 11 show the national allocations as amended by Docket No. 19547 and as proposed herein. Where services are named in the Table in column 8, capital letters (FIXED) denote primary services and lower-case letters (amateur) denote secondary services. In column 6 the symbol "G" means that assignments may be made to stations belonging to the Federal Government; the symbol "NG" means that stations under the Commission's jurisdiction may be assigned frequencies in the band. Shared bands are therefore designated "G, NG". No changes in footnotes to the Allocation Table are being proposed.[2]

6. This proposal to amend the Commission's Rules is issued under the authority of Sections 4(i) and 303(c) of the Communications Act of 1934, as amended.

7. Comments in support of or in opposition to the proposed amendments may be filed on or before April 29, 1974. Reply comments may be filed on or before May 10, 1974. All relevant and timely comments and

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[1] No specific sharing criteria are being advanced at this time, but they may be proposed at a later date in separate proceedings as necessary to insure compatability between the developing space and terrestrial services.

[2] Classes of stations (Column 9) are not being proposed for the terrestrial services at this time.

reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

8. In accordance with the provisions of Section 1.419(b) of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission.

9. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. § 2.106 [amended]

United States		Federal Communications Commission				
Band (GHz)	Allocation	Band (GHz)	Service	Class of station	Frequency (GHz)	Nature of SERVICES of stations
5	6	7	8	9	10	11
*	*	*	*	*	*	*
40.0–41.0	G, NG	40.0–41.0	Fixed Fixed-satellite. Mobile.	Space		
41.0–43.0	G, NG	41.0–43.0	Fixed Broadcasting-satellite. Mobile.	do		
43.0–48.0	G, NG	43.0–48.0	Aeronautical mobile Aeronautical mobile-satellite. Maritime-mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radionavigation-satellite. Maritime radionavigation. Maritime radionavigation-satellite.			
48.0–50.0	G, NG	48.0–50.0	Radiolocation Amateur.			
50.0–51.0	G, NG	50.0–51.0	Fixed Fixed-satellite. Mobile.	Earth		
51.0–52.0	G, NG	51.0–52.0	Earth exploration-satellite. Space research.			
52.0–54.25	G, NG 412J	52.0–54.25	Space research (passive).			
54.25–58.2	G, NG	54.25–58.2	Fixed Mobile (except aeronautical mobile.			
58.2–59.0	G, NG 412J	58.2–59.0	Space research (passive).			
59.0–64.0	G, NG	59.0–64.0	Fixed Mobile (except aeronautical mobile).			
64.0–65.0	G, NG 412J	64.0–65.0	Space research (passive).			
65.0–66.0	G, NG	65.0–66.0	Earth exploration-satellite. Space research.			

United States		Federal Communications Commission				
Band (GHz)	Allocation	Band (GHz)	Service	Class of station	Frequency (GHz)	Nature OF SERVICES of stations
5	6	7	8	9	10	11
66.0-71.0	G, NG	66.0-71.0	Aeronautical mobile Aeronautical mobile-satellite. Maritime mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radionavigation-satellite. Maritime radionavigation. Maritime radionavigation satellite.			
71.0-76.0	G, NG	71.0-76.0	Radiolocation Amateur.			
76.0-84.0	G, NG	76.0-84.0	Fixed Mobile.			
84.0-86.0	G, NG	84.0-86.0	Fixed Broadcasting-satellite. Mobile.			
86.0-92.0	G, NG 412J US74	86.0-92.0	Radio astronomy Space research (passive).			
92.0-93.0	G, NG	92.0-93.0	Fixed Mobile.			
93.0-95.0	G, NG	93.0-95.0	Fixed Fixed-satellite. Mobile.	Earth		
95.0-101.0	G, NG	95.0-101.0	Aeronautical mobile Aeronautical mobile-satellite. Maritime mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radionavigation-satellite. Maritime radionavigation. Maritime radionavigation-satellite.			
101.0-102.0	G, NG 412J	101.0-102.0	Space research (passive).			
102.0-103.0	G, NG	102.0-103.0	Fixed Mobile.			
103.0-105.0	G, NG	103.0-105.0	Fixed Fixed-satellite. Mobile.	Space		
105.0-110.0	G, NG	105.0-110.0	Fixed Mobile (except aeronautical mobile).			
110.0-117.5	G, NG	110.0-117.5	Fixed Inter-satellite. Mobile (except aeronautical mobile).			
117.5-122.5	G, NG	117.5-122.5	Fixed Mobile (except aeronautical mobile).			
122.5-130.0	G, NG	122.5-130.0	Fixed Inter-satellite. Mobile (except aeronautical mobile).			
130.0-140.0	G, NG 412J US74	130.0-140.0	Radio astronomy Space research (passive).			
140.0-141.0	G, NG	140.0-141.0	Fixed Mobile.			
141.0-142.0	G, NG	141.0-142.0	Fixed Fixed-satellite. Mobile.	Earth		

United States		Federal Communications Commission				
Band (GHz)	Allocation	Band (GHz)	Service	Class of station	Frequency (GHz)	Nature OF SERVICES of stations
5	6	7	8	9	10	11
142.0–150.0	G, NG	142.0–150.0	Aeronautical mobile. Aeronautical mobile-satellite. Maritime mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radionavigation-satellite. Maritime radionavigation. Maritime radionavigation-satellite.			
150.0–151.0	G, NG	150.0–151.0	Fixed Mobile.			
151.0–152.0	G, NG	151.0–152.0	Fixed Fixed-satellite. Mobile.	Space		
152.0–165.0	G, NG	152.0–165.0	Fixed Mobile.			
165.0–170.0	G, NG	165.0–170.0	Radiolocation Amateur.			
170.0–175.0	N, NG	170.0–175.0	Fixed Mobile (except aeronautical mobile).			
175.0–182.0	G, NG	175.0–182.0	Fixed Inter-satellite. Mobile (except aeronautical mobile).			
182.0–185.0	G, NG 412J	182.0–185.0	Space research (passive).			
185.0–189.0	G, NG	185.0–189.0	Fixed Inter-satellite. Mobile (except aeronautical mobile).			
189.0–190.0	G, NG	189.0–190.0	Fixed Mobile (except aeronautical mobile).			
190.0–200.0	G, NG	190.0–200.0	Aeronautical mobile Aeronautical mobile-satellite. Maritime mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radio-navigation-satellite. Maritime radio-navigation. Maritime radio-navigation-satellite.			
200.0–220.0	G, NG	200.0–220.0	Fixed Mobile.			
220.0–230.0	G, NG	220.0–230.0	Fixed Fixed-satellite. Mobile.			
230.0–240.0	G, NG 412J US74	230.0–240.0	Radio astronomy Space research (passive).			
240.0–250.0	G, NG	240.0–250.0	Radiolocation Amateur.			

United States		Federal Communications Commission				
Band (GHz) 5	Allocation 6	Band (GHz) 7	Service 8	Class of station 9	Frequency (GHz) 10	Nature {OF SERVICES of stations 11
250.0–265.0	G, NG	250.0–265.0	Aeronautical mobile Aeronautical mobile-satellite. Maritime mobile. Maritime mobile-satellite. Aeronautical radionavigation. Aeronautical radionavigation-satellite. Maritime radionavigation. Maritime radionavigation-satellite.			
265.0–275.0	G, NG	265.0–275.0	Fixed Fixed-satellite. Mobile.			
275.0–300.0	G, NG	275.0–300.0	Fixed Mobile.			
Above 300.0	G, NG	Above 300.0	Amateur			

FCC 74R-104

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of GREAT SOUTHWEST MEDIA CORP., ARKADELPHIA, ARK. ARKADELPHIA BROADCASTING CO., ARKADELPHIA, ARK. For Construction Permits	Docket No. 19892 File No. BPH-8240 Docket No. 19894 File No. BPH-8327

MEMORANDUM OPINION AND ORDER

(Adopted March 20, 1974; Released March 21, 1974)

BY THE REVIEW BOARD: BOARD MEMBER NELSON ABSENT.

1. Great Southwest Media Corporation (Great Southwest) one of the applicants, petitions for leave to file a late motion to enlarge issues against Arkadelphia Broadcasting Company (Arkadelphia), another of the applicants, based on the asserted illness of its principal, Mr. Duncan, and his confinement to bed from December 16, 1973 through January 4, 1974, the last day on which a petition to enlarge could have been timely filed.[1] It is averred that Mr. Duncan's "physical incapacity" made it "impossible for him to properly prepare the necessary information upon which to base" the petition to enlarge.

2. The affidavits and statements do not support the claim of Mr. Duncan's physical incapacity. There is a letter from a doctor that he saw Mr. Duncan on December 16, 1973, but the nature of Mr. Duncan's illness is not specified nor does the doctor give any indication that Mr. Duncan was thereafter under his care. There is an affidavit from Mr. Duncan that he was treated by the doctor on December 16 but no other claim is made. There is an affidavit from one John Brashears, who is not otherwise identified, that Mr. Duncan was confined to bed at his home during the period alleged, that Mr. Duncan's first day back at work was January 4, and that he, the affiant, called on Mr. Duncan several times during the period to deliver mail to him. This showing is clearly a weak one and does not establish that Mr. Duncan's condition forced his delay. However, even were the Board to accept the showing as sufficient to establish Mr. Duncan's incapacity, there is no explanation for the further delay from January 4, 1974 to February 4, 1974. Moreover, while it is contended that Mr. Duncan's condition precluded completion of the petition, the enlargement request is not supported by an affidavit from Mr. Duncan attesting to the correctness of the material stated therein. Finally, the essential facts

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[1] The petition for leave to file was filed February 4, 1974; Arkadelphia filed an opposition on February 13, 1974; and the Broadcast Bureau's opposition was filed February 20, 1974.

alleged in support of enlargement were taken from Arkadelphia's application and their accuracy was subscribed and sworn to by Great Southwest's legal counsel, rather than by a principal. For these reasons, the petition to accept late filed petition to enlarge must be denied.

3. Nevertheless, under the test delineated by the Board in *The Edgefield-Saluda Radio Company*, 5 FCC 2d 148 (1966), the petition[2] has been examined to see whether it raises any serious public interest questions that might warrant the specification of an issue or issues despite the tardiness of the submission. Of the several issues proposed by Great Southwest, only two would be potentially disqualifying if specified by the Board. The first of these relates to ascertainment of community needs, it being petitioner's position, in substance, that Arkadelphia's showing is defective because it failed to include college and high school students in its ascertainment survey of significant groups in the community. Arkadelphia's exhibits relating to ascertainment of community needs are lengthy and detailed, and while it is true that the list of community leaders contacted does not include student spokesmen, officials of colleges and public schools are included and their views were elicited. From its examination, the Board concludes that this showing is adequate.

4. The other potentially disqualifying issue relates to the adequacy of Arkadelphia's proposed staff. Aside from reciting some facts from Arkadelphia's application concerning the type and amount of programming proposed, Great Southwest does not supply any affidavits or allege any facts to support its conclusory statement that an issue should be added to ascertain whether the staff will be adequate to produce the programs proposed in the application. Thus, the showing is so deficient as not to require any further consideration, especially in light of the tardiness of the petition.

5. The other proposed issues do not raise questions of sufficient public interest import to justify their further consideration under the *Edgefield-Saluda* test.

6. Accordingly, IT IS ORDERED, That the petition for leave to file late motion to enlarge and the petition to enlarge issues, both filed by Great Southwest Media Corporation on February 4, 1974, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[2] The petition to enlarge was filed on February 4, 1974; Arkadelphia submitted an opposition on February 13, 1974; and the Bureau's opposition was received on February 20, 1974.

FCC 74-267

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Cease and Desist Order Directed Against GULF COAST TELECEPTION INC., PORT CHARLOTTE, FLA.	Docket No. 19834 CSC-29 (FL053)
GULF COAST TELECEPTION INC., PUNTA GORDA, FLA.	Docket No. 19835 CSC-31 (FL055)

MEMORANDUM OPINION AND ORDER

(Adopted March 13, 1974; Released March 20, 1974)

BY THE COMMISSION:

1. This proceeding was initiated by an Order to Show Cause released October 11, 1973, FCC 73-1019, 43 FCC 2d 242, which directed Gulf Coast Teleception, Inc., operator of cable television systems at Port Charlotte and Punta Gorda, Florida, to show cause why it should not be ordered to cease and desist from further violation of Section 76.91 of the Commission's Rules on the above-captioned cable television systems. Broadcasting-Telecasting Services, Inc., licensee of Station WBBH-TV, Fort Myers, Florida, petitioned the Commission for the aforementioned relief.

2. A prehearing conference was held on November 28, 1973. On November 30, 1973, Gulf Coast waived a hearing and filed a motion to terminate the proceeding without issuance of a cease and desist order. In support of its motion, Gulf Coast offered statements in mitigation of its admitted violations and argued that a settlement agreement reached with Broadcasting-Telecasting moots the issues in the proceeding. Broadcasting-Telecasting also moved to terminate the proceeding, and requested that the Commission issue a proposed consent order which would direct Gulf Coast to protect WBBH-TV's network programming on the above-captioned cable television systems in accordance with the terms of the settlement agreement. Broadcasting-Telecasting contends that the proposed consent order is part of the settlement agreement, and that issuance of such an order is consistent with sound Commission procedures. In view of the foregoing, the Administrative Law Judge terminated the hearing proceeding on January 2, 1974. Contrary to the urgings of Broadcasting-Telecasting, the Administrative Law Judge certified the case to the Commission for consideration as to the issuance of a cease and desist order.

3. Broadcasting-Telecasting filed its initial requests for Orders to Show Cause on October 24, 1972, and it was not until after the Commission issued Orders to Show Cause against the above-captioned

cable television systems that Gulf Coast reached a settlement agreement with Broadcasting-Telecasting and ceased its violation of Section 76.91 of the Rules. The statements which Gulf Coast offers in mitigation and justification of its confessed violations,[1] together with the settlement agreement it reached with Broadcasting-Telecasting, do not persuade us that this proceeding should be terminated without issuance of a Cease and Desist Order.

Accordingly, IT IS ORDERED, That within two (2) days after release of this Memorandum Opinion and Order, Gulf Coast Teleception, Inc., CEASE AND DESIST from the operation of its cable television systems at Port Charlotte and Punta Gorda, Florida, in violation of Section 76.91 of the Commission's Rules and Regulations; provided however, that if Gulf Coast Teleception, Inc., notifies the Commission within two (2) days of the release of this Memorandum Opinion and Order (exclusive of Saturdays, Sundays, and holidays, if any) that it intends to seek judicial stay within fourteen (14) days of the release date of this Order, this Order shall be stayed for thirty-five (35) days from its release date or until judicial determination of a stay motion, whichever occurs first.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] See *Gulf Coast Teleception, Inc.*, FCC 73-1019, 43 FCC 2d 242 at 243, for a recitation of exculpatory statements.

FCC 74-242

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PARTS 2, 89, 91, AND 93 OF THE COMMISSION'S RULES TO EXTEND THE LAND MOBILE/UHF-TV SHARING PLAN FOR CHANNELS 14-20 TO HOUSTON AND DALLAS-FORT WORTH, TEX., AND MIAMI, FLA.
} Docket 18261

FOURTH FURTHER NOTICE OF PROPOSED RULEMAKING

(Adopted March 7, 1974; Released March 15, 1974)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE DISSENTING AND ISSUING A STATEMENT.

1. Notice of Proposed Rule Making is hereby given in the above-entitled matter.

2. On May 20, 1970, the Commission adopted a plan for the shared use of some of the lower UHF television channels (Channels 14 through 20, 470-512 MHz) by the land mobile radio services within fifty miles of the center of the ten largest urban areas of the country, according to the 1960 census.[1] Key elements in the plan include geographic separations between land mobile stations and authorized television stations (operating or not yet in operation) on any of the Channels 14-21, to avoid co-channel, adjacent channel, or intermodulation interference to television reception; limitations on the antenna height and power for land mobile base stations (1,000 feet AAT, 1,000 ERP, or the equivalent); restrictions on the area of operation of mobile stations; and others. No more than two of the seven UHF television channels may be used in any one area for land mobile purposes. These, and other restrictions, were adopted because of the Commission's desire to protect television reception from interference, while providing reasonably adequate facilities for the land mobile services, and to preserve sufficient spectrum in and near the areas involved for future growth of UHF television. While this plan did freeze a number of UHF television table assignments, in almost every case, substitute channels were available, or could be made available, for proposed television stations.

3. The Commission had originally proposed in that proceeding to provide for shared use of as many of the lower seven UHF television channels as feasible in the twenty-five largest urban areas of the country. For a number of reasons, however, a more limited sharing plan was adopted and was confined to the largest ten urban areas.[2] When

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[1] Docket 18261, First Report and Order, 23 FCC 2d 235.

[2] To date, because of delays in completing the necessary coordination with Canada, the sharing plan has not been implemented in Detroit, Michigan, and in Cleveland, Ohio.

the Commission reached its decision, it stated that the sharing plan then adopted would be supervised closely for a five-year period and, at the end of that period as well as during the period, appropriate changes may be made. The plan has been in effect now for nearly four years. It has been implemented with detailed rules and suballocations. The land mobile services are making extremely good use of the frequencies in the 470–512 MHz band. For example, New York City has been provided the frequency resources in this band to accommodate the future communications requirements of its police department. In fact, in the New York and in the Washington, D.C., metropolitan areas, the frequency assignment growth in this band has been so rapid that changes in the suballocation structure became necessary.[3] During this period, we have had no complaints of interference to UHF television reception from land mobile operations in the 470–512 MHz band, and no indications that the sharing plan has had adverse effects on UHF television.

4. In view of this background and the continued growth of land mobile communications requirements, the Commission has studied the feasibility of extending the sharing plan into other urban areas. Our examination of land mobile requirements indicates that it is appropriate to extend the plan into the urban areas of Houston and Dallas-Forth Worth, Texas, and Miami, Florida. These areas were selected because land mobile growth there has been particularly rapid as a result of the burgeoning population and economic growth. Moreover, it appears that the land mobile radio services can be given access to frequencies in the 470–512 MHz band immediately, since replacement UHF television channels can be made available in these areas while providing full protection to existing television facilities (operating, or authorized but not yet constructed), with no modification of any television station authorization.

5. The Commission has also examined carefully the need for providing access to the 470–512 MHz band at this time to the land mobile radio services in these three areas. In so doing, we took into account the impending availability of frequencies in the 806–947 MHz region, as well as the possibility of accommodating the most urgent needs for spectrum within the present land mobile allocations below 470 MHz. Some room exists within the present allocations to accommodate part of the requirements, but not within the services where the need for additional communications is most pressing. Thus, for example, in the Business Radio Service in Houston, we have authorized, on the average, 145.87 mobiles per available frequency in the 450–470 MHz band. To a lesser degree, the Business frequencies are also heavily loaded in in the Dallas-Fort Worth and in the Miami urban areas. While the number of authorized units may not always reflect the number of mobile units in actual operation, the average authorized channel loadings indicated may very well exceed the Commission's guidelines.

6. The frequencies in the 806–947 MHz region, when Docket 18262 is finalized, will, of course, provide for the future growth of land mobile communications. It should be noted, however, that there will

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[3] Fourth Report and Order, Docket 18261, 43 FCC 2d 949 (1973).

be a period of time following the issuance of our decision in Docket 18262 before equipment will be available on a regular basis. By contrast, radio equipment for operation in the 470–512 MHz band is readily available; is produced on a regular basis; and has been tested in regular operation. In short, while the industry prepares to implement the frequency allocations in the 806–947 MHz region, present land mobile requirements in the areas mentioned can be accommodated in the 470–512 MHz band, particularly since this can be accomplished without appreciable adverse impact on existing television broadcasting.

7. However, since we are closer to the implementation of the frequencies in the 900 MHz band, we believe that a single UHF–TV channel in each of the three urbanized areas should be sufficient to accommodate the immediate needs of the land mobile services there. Accordingly, we propose to amend Parts 2, 21, 89, 91 and 93 of the Commission's Rules to make available to the land mobile radio services the following frequency bands: Miami, Florida, 470–476 MHz; Houston, Texas, 488–494; and Dallas-Fort Worth, Texas, 482–488 MHz. These frequencies would be made available under the rules and standards adopted in the First Report and Order in this proceeding. 23 FCC 2d 325. The necessary changes in the Table of Television Assignments are being covered in a separate notice adopted concurrently in Docket 19964.

8. Further, while the frequencies mentioned will be made available and are to be governed by the standards set out in our rules for 470–512 MHz land mobile operations, we will not suballocate the space as we did before. The reason for this stems partially from our experience, to date, in assigning frequencies in the "pools" designated in our prior orders in this case, but it is also based upon our desire to keep the assignment plan for Dallas-Fort Worth, Houston, and Miami as flexible as possible, so that whatever the pressing requirements of users in these areas turn out to be, we will be able to adjust to them with a minimum of procedural delay. Accordingly, unlike our prior assignment plan, we will not designate any particular frequency group for use by any particular class of eligibles.[4]

9. In view of the long background of this proceeding, we feel that the scope of the notice should be limited. In this regard, no useful purpose would be served by commenting on the sharing concept, as such, or on the particular sharing plan we have already implemented in other urbanized areas. Therefore, the parties should confine their comments to whether the UHF-television/land mobile sharing plan we have already adopted should be extended to the urbanized areas mentioned above. With this narrow limit, the comment period will be thirty days with additional fifteen days for replies.

10. Authority for the proposed amendments is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested persons may file comments on or before April 22, 1974, and reply comments on or before May 6, 1974. Relevant and

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[4] We propose, however, to allocate, in each of the three urban areas, twelve frequency pairs in the Domestic Public Radio Services to be made available under existing rules.

timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

11. In accordance with the provisions of Section 1.419 of the Commission's Rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission. Response will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX A

Parts 2, 21, 89, 91, and 93 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

1. In § 2.106, the table is amended with respect to the frequency band 470–512 MHz in columns 7 through 11 and footnote NG 66 's amended to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * * * *

FEDERAL COMMUNICATIONS COMMISSION

Band (MHz)	Service	Class of station	Frequency	Nature OF SERVICES of stations
7	8	9	10	11
470–512	Broadcasting	Television broadcasting		Broadcasting. Public safety.
	Land mobile (NG66)	Land mobile		Land transportation. Industrial. Domestic public.

* * * * * * *

NG66—The frequency band 470–512 MHz is allocated for use in the Broadcasting and Land Mobile Radio Services. In the Land Mobile Services it is available for assignment in the Domestic Public, Public Safety, Industrial, and Land Transportation Radio Services at, or in the vicinity of 13 urbanized areas of the United States, as set forth in the table below, and subject to the standards and conditions set forth in Parts 21, 89, 91, and 93 of this chapter.

Urbanized area:	*TV channel*
New York-northeastern New Jersey	14, 15
Los Angeles	14, 20
Chicago-northwestern Indiana	(1)
Philadelphia, Pa.-New Jersey	(1)
Detroit, Mich	15, 16
San Francisco-Oakland, Calif	16, 17
Boston, Mass	14, 16
Washington, D.C.-Maryland-Virginia	17, 18
Pittsburgh, Pa	14, 18
Cleveland, Ohio	14, 15
Miami, Fla	14
Houston, Tex	17
Dallas, Tex	16

[1] The specific channel availability will be designated following the conclusion of a separate proceeding.

B. Part 21—Domestic Public Radio Services (Other than Maritime Mobile).

2. In § 21.501(l), Table A is amended by the addition of the three cities listed below:

§ 21.501 Frequencies.

* * * * * * *

(1) * * *

TABLE A.—*Frequency availability for land mobile use*

Urbanized area	Geographic center		Frequencies (MHz)
	North latitude	West longitude	
* * *	*	* *	*
Miami, Fla	25°46′37″	80°11′32″	Channel 14. 470–476.
Houston, Tex	29°45′26″	95°21′37″	Channel 17. 488–494.
Dallas, Tex	32°47′09″	96°47′37″	Channel 16. 482–488.

* * * * * * *

C. Part 89—Public Safety Radio Services.

3. Section 89.60(a)(2) is amended by the addition of three cities to the list of urbanized areas as follows:

§ 89.60 Use of FCC Form 425.

(a) * * *
(2) * * *
11. Miami, Fla.
12. Houston, Tex.
13. Dallas, Tex.

* * * * * * *

4. In § 89.123(b), Table G is amended by the addition of the three cities listed below:

§ 89.123 Frequencies in the band 470–512 MHz.

* * * * * * *

(b) * * *

TABLE G.—*Frequency availability for land mobile use*

Urbanized area	Geographic center		Frequencies (MHz)
	North latitude	West longitude	
* * *	*	* *	*
Miami, Fla	25°46′37″	80°11′32″	Channel 14. 470–476.
Houston, Tex	29°45′26″	95°21′37″	Channel 17. 488–494.
Dallas, Tex	32°47′09″	96°47′37″	Channel 16. 482–488.

* * * * * * *

D. Part 91—Industrial Radio Services.

5. Section 91.57(a)(2) is amended by the addition of three cities to the list of urbanized areas as follows:

§ 91.57 Use of FCC Form 425.

(a) * * *
(2) * * *
11. Miami, Fla.

12. Houston, Tex.
13. Dallas, Tex.

* * * * * * *

60. In § 91.114(b), Table G is amended by the addition of the three cities listed below:

§ 91.114 Frequencies in the band 470–512 MHz.

* * * * * * *

(b) * * *

TABLE G.—*Frequency availability for land mobile use*

Urbanized area	Geographic center		Frequencies (MHz)
	North latitude	West longitude	
* * *	* *	* *	*
Miami, Fla	25°46′37″	80°11′32″	Channel 14. 470–476.
Houston, Tex	29°45′26″	95°21′37″	Channel 17. 488–494.
Dallas, Tex	32°47′09″	96°47′37″	Channel 16. 482–488.

* * * * * * *

E. Part 93—Land Transportation Radio Services.

7. Section 93.57(a)(2) is amended by the addition of the three cities listed below:

§ 93.57 Use of FCC Form 425.

(a) * * *
(2) * * *
11. Miami, Fla.
12. Houston, Tex.
13. Dallas, Tex.

* * * * * * *

8. In § 93.114(b), Table G is amended by the addition of the three cities listed below:

§ 93.114 Frequencies in the band 470–512 MHz.

* * * * * * *

(b) * * *

TABLE G.—*Frequency availability for land mobile use*

Urbanized area	Geographic center		Frequencies (MHz)
	North latitude	West longitude	
* * *	* *	* *	*
Miami, Fla	25°46′37″	80°11′32″	Channel 14. 470–476.
Houston, Tex	29°45′26″	95°21′37″	Channel 17. 488–494.
Dallas, Tex	32°47′09″	96°47′37″	Channel 16. 482–488.

* * * * * * *

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I dissent to the issuance of further proposed rulemaking to provide for additional sharing of UHF television frequencies. It is my view that no evidence of need for additional land mobile channels has been provided to us that would warrant such an action.

FCC 73-272

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
JAMES C. LANGE
Concerning Dismissal From Employment by Edorea Corp., and Request by Consumer Federation of America for Declaratory Ruling

MARCH 7, 1973.

MRS. ERMA ANGEVINE,
Executive Director,
Consumer Federation of America,
1012 14th Street, NW.,
Washington, D.C. 20005

DEAR MRS. ANGEVINE: This refers to your letter of July 18, 1972 concerning the complaint of James C. Lange against the Edorea Corporation, licensee of WQWK(FM), State College, Pennsylvania. Although a copy of an agreement dated March 16, 1972, between the licensee of WQWK(FM) and Mr. Lange was filed with the Commission on April 4, 1972, resulting in the rehiring of Mr. Lange by the station and withdrawal of the complaint against WQWK(FM), you request that the Commission (1) weigh the facts before it in the James Lange complaint and issue a final ruling on the public interest issues involved as a condition precedent to WQWK(FM)'s license renewal; and (2) issue the declaratory ruling requested in the complaint immunizing newsmen from retaliatory dismissals based on stories critical of station sponsors and other commercial interests.

Mr. Lange's complaint against WQWK(FM) was filed with the Commission on December 23, 1971 and alleged that Mr. Lange was dismissed from his position as a newscaster with WQWK(FM) as a result of pressure on the licensee by an advertiser which was displeased with his broadcasts about the advertiser. Mr. Lange requested that the Commission:

(1) Order his reinstatement, with full back pay, as a newscaster for WQWK(FM) in State College, Pennsylvania;

(2) Rule that broadcast licensees must not summarily fire their employees without providing them with written advance notice of the reasons and time to respond;

(3) Issue a Declaratory Ruling that broadcast licensees must not, in a manner violative of the First Amendment and the "public interest", distort or warp the content of news programming solely or primarily to avoid economic reprisals by station sponsors, or operate

under news pre-clearance policies that impose special burdens on "controversial" news stories;

(4) Issue an order to show cause why the licensee of WQWK(FM) should not cease and desist from operating under policies whereby the content of newscasts is distorted or altered in response to commercial-advertiser pressures, and special procedural burdens are placed on the broadcast of "controversial" news stories;

(5) Initiate any necessary further evidentiary proceedings as might prove warranted by the "extrinsic evidence" of news distortion presented herein.

The copy of the agreement between the Edorea Corporation and Mr. Lange filed with the Commission was signed by both parties and purported to represent a settlement of the dispute and a complete resolution of all issues raised. It was accompanied by a copy of a joint statement released by the parties and new written station guidelines which proposed to make explicit the station's policies in the presentation of news and editorial type programs. The agreement was also accompanied by a letter dated April 3, 1972 to the Commission from Mr. Tracy A. Westen, counsel for Mr. Lange, stating that "On the basis of the papers which accompany this letter and the settlement they evidence, Mr. Lange wishes to withdraw his complaint and request for specific relief from further Commission consideration."

You state that although the licensee of WQWK(FM) and Mr. Lange filed an agreement with the Commission which announced a settlement of their controversy and which resulted in Mr. Lange's being rehired as a newsman by the station and adoption by WQWK(FM) of a policy that it would not suppress any story in the interest of preventing economic reprisals, you believe that issues raised in Mr. Lange's complaint are important, recurring, and will affect the quality of radio and television newscasting for many years to come, and that two important issues are awaiting resolution by the Commission.

Concerning your first request, you state that the Commission must determine whether Mr. Lange was in fact discharged for improper reasons, and, if so, whether his reinstatement is sufficient compensation for the original discharge; that stations should not be excused from discharging employees in a manner not consistent with the public interest without some official Commission reprimand—at the very least, a strong statement that such conduct cannot be approved by the Commission and in the future will be sanctioned severely; that WQWK(FM)'s license was due to expire on August 1, 1972 and that its renewal application was then before the Commission; that the Commission should not renew WQWK(FM)'s license for another three-year period without an affirmative finding either exculpating the station for its treatment of Mr. Lange or imposing proper warnings or sanctions. You ask that your request be associated with WQWK(FM)'s renewal application and be acted upon before the station's license is renewed.

Concerning your second request, you state that Mr. Lange asked the Commission to issue a declaratory ruling that licensees "must not, in a manner violative of the First Amendment and the 'Public Interest', distort or warp the content of news programming solely or primarily to avoid economic reprisals by station sponsors, or operate under news pre-clearance policies that impose special limitations on 'controversial' news stories"; that you believe that the requested declaratory ruling is vital to the freedom and integrity of the news dissemination process, and that such a ruling would importantly protect the right of broadcast audiences to receive accurate and truthful news coverage; and that a strongly-worded Commission statement affirming the rights of newsmen to report the news without fear of economic reprisals would go a long way toward deterring WQWK(FM) and other stations from engaging in such conduct in the future.

A field investigation of Mr. Lange's complaint against WQWK (FM) has been conducted by the Commission. We cannot conclude from the evidence obtained by the investigation that the licensee selected or attempted to influence its news programming on the basis of its private rather than the public interest and/or submitted to economic pressures on the part of station advertisers. The investigation did indicate that a considerable amount of confusion existed among station management and employees concerning the policies of the station regarding the proper identification of personal comments on newscasts, the clearance with management of controversial stories prior to broadcast, and station guidelines in the presentation of news and editorial type programs generally. It is noted that the station had no written guidelines concerning these matters prior to the filing of Mr. Lange's complaint. It is also noted that the joint statement released by the parties at the time of their mutual settlement of the complaint states that "Following extensive discussion between Mr. Lange and Mr. Rea, it was agreed that the lack of written guidelines resulted in confusion as to the exact scope of its (the station's) policies. In view of this, the station has accepted Mr. Lange's representation that he understood the pre-clearance policy to apply only to editorial type programs. It is the opinion of both parties that Mr. Lange's dismissal was the result of a lack of staff management communication, and not improper conduct by Mr. Lange as he understood the station's policies." Thus, both parties to the dispute have stated that the dismissal was not caused by economic pressure from advertisers. Evidence gathered during the investigation supports the conclusion.[1] Accordingly, the Commission does not believe that there are any substantial or material questions of fact surrounding Mr. Lange's dismissal and concludes that no further action is warranted.

With respect to your second request, the Commission has many times in the past enunciated its policies in the area of selection of news, and has made it clear that licensees must choose program matter based upon service to the public interest rather than the licensee's private interest. *Red Lion Broadcasting Co.* v. *FCC* 395 U.S. 367, 388–390 (1969). As stated above, the evidence supports a finding that Mr. Lange was not discharged because of economic considerations.

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[1] Included in that evidence is a tape recording of a conversation between Mr. Lange and the station manager. The recording was made by Mr. Lange without the station manager's knowledge on November 8, 1971, three days after Mr. Lange was dismissed but before any petitions had been filed. The manager advised Mr. Lange that he was concerned about advertiser cancellations, but that the decision to dismiss Mr. Lange was not based on that concern. Rather, the main reason for the dismissal was for not informing the station manager in advance of the broadcast in question.

Finally, it should be noted in connection with your letter that since the licensee has been repeatedly declared by the Commission to be responsible for everything it broadcasts, it of course has the right to review news and commentary as well as everything else to be broadcast. However, the essential question here and in similar cases is whether the licensee deliberately distorts or stages news or selects or suppressed news to further its private interests, which would be the case if it yielded to advertiser pressure to delete a story it otherwise would have run on the basis of its news value. It would be inconsistent with the Commission's policies to declare that a licensee could not review broadcast material, in view of the licensee's responsibility for program content and for compliance with statute, rule and Commission policy; e.g., equal time, personal attacks, obscenity, lottery information, etc.,—in addition to licensee's liability for defamation.

Commissioner Johnson dissenting; Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary*.

FCC 74-226

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Petition of
P/H ELECTRONICS
Concerning a Review of Requests Made
by the Office of Chief Engineer

MARCH 7, 1974.

BIEBEL, FRENCH & BUGG,
2500 Winters Bank Tower,
Dayton, Ohio 45402

Attention: Mr. Forgrave

GENTLEMEN: The Commission has considered your petition, dated October 4, 1973, on behalf of P/H Electronics, 117 East Helena Street, Dayton, Ohio 45402, for a review of certain requests made by the Chief of the Radio Frequency Devices Branch, Office of Chief Engineer and set out in letters dated July 26, 1973 and September 14, 1973, file number 6130/TD EQU 4-6-1.

Information came to the attention of the Commission in April 1973 indicating that P/H Electronics was marketing a wireless language teaching system—MONI-COM II—which did not appear to comply with our Rules. Commission inquiry confirmed that P/H Electronics was indeed marketing such a system containing certain RF devices in violation of Sections 2.801 et seq. (47 CFR 2.801 et seq.) of our Rules.

The basic MONI-COM II system is comprised of two major assemblies—the teacher's "console" and the student's "headset". The console contains a 33.4 MHz receiver for monitoring the student's conversation, a number of lesson transmitters and a control transmitter operating in the frequency band between 105 and 471 kHz. The student headset contains a 33.4 MHz transmitter to send the student's voice to the teacher's console, a lesson receiver and a monitor receiver operating in the 105-471 kHz frequency band.

The 33.4 MHz receiver and the low frequency (105-471 kHz) receivers and transmitters can be operated pursuant to Part 15 of our Rules provided the equipment complies with the applicable technical standards in the Commission's Rules. The 33.4 MHz receiver MODEL NO. CMR was certificated by the Commission on August 14, 1973, the application therefor having been filed on June 27, 1973. The low frequency transmitter certificates indicating compliance with our Rules are not required to be executed by the Commission and they are usually prepared by the manufacturer. The low frequency receiver does not require any form of certification under our present rules.

P/H Electronics has stated that these low frequency equipments comply with our Part 15 regulations. Accordingly, these devices can legally be operated as part of the MONI-COM II System.

Part 15 does not provide for the operation of the 33.4 MHz transmitting device. The petitioner was informed in our letter of July 26, 1973, that this transmitter may be licensed in the Business Radio Service, Part 91. Subpart L, provided all the requirements of the service, including that of type acceptance for the transmitter, are met. Thus, the MONI-COM II system can be operated legally, only if the 33.4 MHz transmitter therein is appropriately licensed under Part 91 by the user of the system. The 33.4 MHz transmitter TYPE NO. CHR was type accepted by the Commission on July 26, 1973, the application therefor having been filed on July 3, 1973.

Since the MONI-COM II system was marketed prior to the time P/H Electronics had secured the appropriate equipment authorizations and since individual purchasers may not be cognizant of our licensing requirement concerning the 33.4 MHz transmitter, the petitioner had been requested to submit to the Commission a list identifying those who had purchased the equipment. This list would be employed to advise users of the MONI-COM II systems of our licensing requirements.

The Petition filed on behalf of P/H Electronics requests

> that the grant of Type Acceptance for the transmitter and of the Certification for the receiver be held applicable to identical MONI-COM II systems sold both before and after the Type Acceptance of the transmitter and Certification of the receiver;
>
> that the high frequency transmitter of the MONI-COM II system be declared not subject to the requirements for license, both for those sold before and after Type Acceptance; and
>
> that the requirement that Petitioner supply the names of purchasers of MONI-COM II systems be set aside.

The Commission's equipment authorizations (type acceptance and certification) apply to a particular type or model and this authorization is applicable to the use of all such identical units whether manufactured prior to or after the date of grant of certification or type acceptance. To the extent indicated above, your first request is accordingly granted.

With regard to the licensing of the 33.4 MHz transmitter, petitioner states that the transmitter portion of the MONI-COM II system "operates at 33.4 MHz with a radiated field strength of less than 32 uV/m at 100 feet" which is the field strength limit set by the Commission in Part 15 for receivers radiating electromagnetic energy in the 25-70 MHz frequency band. The petitioner argues accordingly that the transmitting device is not capable of causing harmful interference to radio communications by virtue of the fact that it is operating at a level lower than that permitted for receiver radiation.

P/H Electronics argues further that the transmitter is not subject to Section 302 (47 USC 302) of the Communications Act as amended because of the low level of radiation emitted and, accordingly, is not subject to the licensing requirements established by the Commission. In this connection, petitioner overlooks the mandate imposed on the Commission in Section 1 of the Communications Act—"of insuring that an efficient and effective radio communications service is provided to the people of the U.S.". Under this mandate, an allocation was made of the radio spectrum based on the social and economic needs of the people as well as on technical considerations; this allocation of use is based on and implemented by a properly administered licensing system.

We have found it possible to augment our system of licensing by adopting Part 15 of our Rules which permits the operation, under certain limited conditions specified therein, of miniature transmitting devices without individual licenses. Our rules as presently formulated do not provide for other than licensed operation of the 33.4 MHz transmitter. Moreover, orderly procedures have been established to amend our Rules and these procedures must be followed to assure that the public interest is protected. The petitioner has chosen to disregard these procedures and now seeks to have a staff decision based on our rules set aside. The rule concerning the requirement for a licensee to operate a transmitter in the 33 MHz band is explicit and, therefore, for this reason and others stated above, your request that the MONICOM II system "be declared not subject to the requirement for License" is hereby denied and the staff decision regarding this matter is affirmed.

It is clear from the information at hand that your client's sales of this equipment prior to the receipt of type acceptance and certification constituted violations of our marketing regulations and permitted his customers to proceed to the operation of these devices without knowing that a license was required under Federal law. Our request for a list of these individuals was designed to ameliorate the gravity of this conduct by enabling the Commission to inform these customers of their obligations.

Since you are reluctant to provide the Commission with such a list, the Commission will accept as an alternative a certified statement that you have notified each customer in question of the Commission's licensing requirements within 30 days of the receipt of this letter. You are requested in addition to specifically ascertain and inform the Commission when all such purchasers have filed the necessary application for license. Further, you are requested to inform the Commission of your progress in this matter at 30 day intervals until all affected individuals have filed the necessary applications.

BY DIRECTION OF THE COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-246

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Cease and Desist Order To Be Directed Against: VIRGINIA A. PICKENS, 4928 PARKVIEW, KANSAS CITY, KANS. Order To Show Cause Why the License for Radio Station KDX-6052 in the Citizens Radio Service Should Not Be Revoked	Docket No. 19548

ORDER

(Adopted March 13, 1974; Released March 20, 1974)

BY THE COMMISSION:

1. The Commission has considered: (a) a letter pleading received July 11, 1973 on behalf of respondent objecting to the Decision of the Review Board herein, FCC 73R-206, 41 FCC 2d 78, released June 5, 1973; (b) an opposition filed July 24, 1973 by the Chief, Safety and Special Radio Services Bureau indicating it will not object to acceptance of said pleading as an application for review, but contending it should be denied as an application for review, as without merit.

2. IT IS ORDERED:

(a) That the pleading received July 11, 1973 IS ACCEPTED as an application for review.

(b) That such application for review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74D-4

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of RADIO GENEVA, INC., GENEVA, N.Y.	Docket No. 19709 File No. BPH-7645
BUCCANEER BROADCASTING LTD., GENEVA, N.Y. For Construction Permits	Docket No. 19710 File No. BPH-7821

APPEARANCES

Isadore G. Alk, Esq., on behalf of Radio Geneva, Inc.; *Dominic Monahan, Esq.* and *Leonard Baxt, Esq.*, on behalf of Buccaneer Broadcasting Ltd.; and *Theodore D. Kramer, Esq.*, on behalf of Chief, Broadcasting Bureau, Federal Communications Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JAY A. KYLE

(Issued January 25, 1974; Effective March 21, 1974 Pursuant to Section 1.276 of the Commission's Rules)

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of Radio Geneva, Inc. (Radio Geneva) and Buccaneer Broadcasting Ltd. (Buccaneer) for new FM broadcasting stations in Geneva, New York. The Commission, by an Order of March 21, 1973, designated these applications for a comparative hearing. On July 25, 1973 the Review Board released a Memorandum Opinion and Order (42 FCC 2d 254, 27 RR 2d 1680) enlarging the issues against the application of Buccaneer. Therefore, the issues as enlarged are as follows:

> 1. To determine with respect to the application of Buccaneer Broadcasting Ltd.:
>
> (a) the estimated costs for legal fees, equipment payments, and pre-operation equipment and installation costs during the first year of operation, and whether such estimates are reasonable;
>
> (b) Whether the applicant can demonstrate the availability of advertising revenues in the amount of $25,000, and, if not, whether the applicant has available other sources of funds to meet its requirements, including any additional funds necessary in light of evidence adduced pursuant to issue (a);
>
> (c) Whether, in light of the evidence adduced under the preceding issue, the applicant is financially qualified.
>
> 2. To determine which of the proposals would, on a comparative basis, better serve the public interest.
>
> 3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applicants for construction permit should be granted.

2. Subsequently, on September 11, 1973 Radio Geneva and Buccaneer filed a Joint Petition for Approval of Settlement Agreement and Other Relief. The petition requested the issuance of an order approving the settlement agreement, dismissing Radio Geneva's application, provid-

ing reimbursement to Radio Geneva for expenses incurred in prosecuting its application in an amount not to exceed $4,500 and granting Buccaneer's application. Pursuant to pleadings filed, and an oral argument held, at a prehearing conference on October 24, 1973, the ruling was made that a hearing would be held on Issue 1 only and that a ruling on the joint petition would be deferred.

3. Prehearing conferences were held on April 18, June 15, 19, August 29, and October 24, 1973 and the hearing was held on October 31, 1973. The record was closed on November 27, 1973 by an order released November 28, 1973 (FCC 73M–1344). Proposed findings of fact and conclusions of law were filed by the Commission's Broadcast Bureau on December 12, 1973 and Summary Statement of Buccaneer Broadcasting Ltd. adopting in main the Broadcast Bureau's proposed findings of fact and conclusions of law were filed on December 14, 1973.

FINDINGS OF FACT

4. This proceeding, as heretofore stated, was originally designated as a comparative hearing on the applications of Buccaneer and Radio Geneva for new FM stations in Geneva, New York. As the result of a withdrawal agreement, the scope of the proceeding was substantially reduced to the financial issue directed to Buccaneer. The Joint Petition for Approval of Settlement Agreement requested the Presiding Judge to issue an order approving the settlement agreement, dismissing Radio Geneva's application, providing reimbursement to Radio Geneva for expenses incurred in prosecuting its application and granting the Buccaneer application. There was a subsequent ruling that a hearing would be held on the financial issue, Issue 1, and that a ruling on the Joint Petition would be deferred. As observed above, the evidentiary hearing was held in Washington, D.C. on October 31, 1973.

5. Three members of the public appeared at the October 31 hearing to give testimony on the financial issue against Buccaneer. David Honig appeared as an unpaid consultant for COMAC, a broad-based black community organization in Geneva, New York. Honig testified that he was also working with the Spanish Association of the Finger Lakes and with the Unified Community Coalition, both of Geneva, New York. Also appearing along with Honig was Jose Serna from the Spanish Association of the Finger Lakes and Mrs. Rosa Blue from the Unified Community Coalition, both of Geneva, New York. The written testimony of each of these witnesses, Public Exhibits Nos. 1, 2 and 3, were received into evidence over the objection of counsel for the Broadcast Bureau on the grounds of relevancy. The sum substance of the testimony of these witnesses was directed primarily to the needs of the minority groups in the area of Geneva, New York and to what the witnesses considered was the failure or neglect of Buccaneer to allocate sufficient funds for minority employment and minority programs. The Broadcast Bureau points out in its proposed findings appropriately that Issue No. 1 against Buccaneer is directed to its availability of funds and to only a very limited question of its estimated costs. The pertinent portion of this issue reads in part as follows: "To determine * * * the estimated costs for legal fees, equipment

payments and pre-operation equipment and installation costs during the first year of operation and whether such estimates are reasonable."

6. It is patently clear from the evidence that the testimony of the public witnesses should be given little weight, if any, in this Initial Decision but consideration has been accorded the testimony of these public witnesses in this Initial Decision.

7. Turning next to Issue 1(a). The president of Buccaneer, Francis C. Shoupe, Jr. testified at the time of the hearing that this applicant had paid $3,000 in legal fees. It was estimated that additional legal fees would be between $5,400 and $6,000. Buccaneer is to pay $2,500 when a construction permit is granted. Therefore, from the evidence it is apparent that the total legal fees will be in the neighborhood of $6,000. Buccaneer will lease its equipment from CCA Electronics Corporation of Gloucester City, New Jersey. In a proposal dated June 19, 1973, CCA would require a down payment of $4,341 leaving a balance of $17,364 to be financed over a period of five years with 60 equal monthly payments of $298.33. Using this formula, Buccaneer's first year equipment payments calculated for 12½ months totals $3,729.

8. The installation of Buccaneer's tower and antenna will be provided by CCA Electronics. The cost of this installation is included in its monthly equipment payments. Shoupe estimates that $100 may be required for minor items which may be necessary to prepare its proposed building for use as a radio station. Shoupe intends to do most of the installation of the equipment. A licensed electrician will be hired at an estimated cost of $200 for labor and $200 for material to do the wiring of the transmitter and antenna de-icers into the electrical system of the building. It is estimated that materials for installation of consoles and shelves will be $150. Shoupe has prior experience in studio and transmitter installation at Station WKHA, Saratoga, New York and Station WEOS–FM, New Haven, New York. Buccaneer's pre-operation equipment and pre-operation expenses total $650.

9. Pertaining to Issue 1(b), Buccaneer's estimated construction costs as modified and first year operating costs are as follows:

Legal	$6,000
FCC grant fee	900
Down payment on equipment	4,341
Preoperating expenses, including engineering and installation costs	650
First-year equipment payments (12½ months)	3,729
Remodeling and lease payments	3,000
Salaries	27,000
Utilities	2,200
Insurance	700
Audio network	3,812
Office supplies	1,000
Miscellaneous	1,000
Total	54,332

10. It must be further considered at this point that Buccaneer will be obligated to Radio Geneva for an additional $4,500. Shoupe testified that this payment is due within five days after an unconditional grant of the construction permit is made. This $4,500 would be drawn

either from moneys received on the Walsh stock subscription or from moneys anticipated to be available from the National Bank of Geneva which will be referred to later herein.

11. The sources of funds to meet its construction and first year operating costs proposed to be relied upon by Buccaneer are as follows:

Bogart Plumbing & Heating Co. loan	$11,000
National Bank of Geneva loan	10,000
Line of credit—National Bank of Geneva	30,000
National Bank of Geneva loan	2,500
Advertising revenues	12,650
Stock subscription—Joseph L. Walsh	10,000
Joseph L. Walsh loan	5,000
Total	81,150

12. As set out in the designation order, the Commission concluded that the Bogart Plumbing and Heating Company and National Bank of Geneva loans just referred to above in the amounts of $11,000 and $10,000, respectively, would be available. The Bogart loan calling for 6% rate of interest provides that the first principal and interest payments are deferred until the 18th month after the loan is made while, on the other hand, the National Bank of Geneva loan bearing interest at 9% per annum provides for the interest and principal payments to be deferred until one year after the loan is made. This loan is repayable on a five year period. The National Bank of Geneva has agreed to extend a $30,000 line of credit upon the following terms and conditions to Buccaneer:

> 1. That Buccaneer Broadcasting Ltd. receive a construction permit issued by the Federal Communications Commission for the construction of an FM radio station in the Geneva, New York area.
>
> 2. That the corporation enter into an agreement at the time of the loan by which the loan shall be repaid on the following basis:
>
> (a) That the line of credit for $30,000 shall be reduced concurrently with advertising revenues received by Buccaneer Broadcasting Ltd. during the first year of actual on-the-air operation on a dollar for dollar basis. At the time the corporation receives the total sum of $30,000 in advertising revenues, the said line of credit shall be exhausted.
>
> (b) That any money borrowed by the corporation pursuant to this line of credit shall bear an interest rate of 3 per cent over prime rate.
>
> (c) That repayment of any principal shall be deferred for a period of one year from the date the corporation first borrows pursuant to this line of credit. However, interest at the aforesaid rate shall be paid during the first year of the loan.[1]
>
> (d) Principal and interest repayment shall be made on a monthly basis over a period of five years.
>
> 3. That the following individuals personally guarantee the line of credit pursuant to the agreement each of them signed, dated the 24th day of May, 1973, which guarantee shall not exceed the sum of money set forth opposite the name of each individual, to wit:[2]

---

[1] By letter dated June 6, 1973, the National Bank of Geneva modified this provision by permitting both principal and interest to be deferred for a period of one year from the date the corporation first borrows pursuant to the line of credit.

[2] Each guarantor listed has agreed to guarantee the amounts set forth next to his name. See terms of guarantee agreement and amendments, thereto, paragraph 12, *supra*.

Guarantor:	*Amount*
Carlton K. Brownell	$3,000
Jackson G. DeBolt	3,000
Jackson M. DeBolt	5,000
Gregory J. Rech	3,000
Lawrence R. Hilmire	2,000
Peter Hahn	3,000
Walter C. Gage	3,000
Theodore Bogart	5,000
Raymond D. Gage	3,000

> 4. That the Board of Directors of The National Bank of Geneva have specifically reviewed the terms of the aforesaid agreement dated the 24th day of May, 1973 by and between Buccaneer Broadcasting Ltd. and the above stated individuals and has approved of the said terms thereof, and has approved the said line of credit herein specified based upon the terms of said agreement and the agreement of the guarantors therein to guarantee their respective proportionate share of this line of credit.

Provision is made that this line of credit may be drawn as needed by Buccaneer either in one lump sum or periodic withdrawals. It is to be observed again that the line of credit provides that the nine named guarantors will sign a guarantee of a line of credit for Buccaneer's use in the amount listed by each guarantor's name. Pertinent provisions relating to the guarantee agreement are herewith set out.

13. The guarantee, referred to in condition 3, *supra*, of the National Bank of Geneva agreement (Finding No. 12) for the line of credit provides that the nine named guarantors will sign a guarantee of a line of credit on behalf of Buccaneer for the amount listed aside each guarantor's name. Buccaneer agrees to adhere to the following conditions:

> 1. That the corporation [Buccaneer] obtain the construction permit from the Federal Communications Commission for the construction of an FM radio station in the Genera, New York area, and that the corporation [Buccaneer] begin construction of the facilities for broadcasting.
>
> 2. That any money so borrowed by the corporation [Buccaneer] from the banking institution out of the guaranteed fund shall be utilized only to pay current operating expenses of the corporation [Buccaneer] during the first operating year of the said corporation [Buccaneer] commencing at the time the corporation [Buccaneer] actually goes on the air with the FM broadcast, and the said money shall not be borrowed from the guaranteed fund until the corporation [Buccaneer] commences on-the-air operation.
>
> 3. That the corporation [Buccaneer] shall at the end of each month, or as soon thereafter, but no later than ten days following the close of each month, certify to the lending institution that is providing the said line of credit, the total expenses of the corporation [Buccaneer] to date, the total advertising contracts sold for the first year of operation of the radio station, and the total sum of monies actually received by the corporation [Buccaneer] in payment of the advertising contracts.
>
> 4. That the guarantors' obligation shall be reduced in the same proportion that the total advertising dollars actually received from whatever source during the first year of operation bears to $30,000 and such guarantee-obligation shall be reduced concurrently with the receipt of the said advertising revenues.
>
> 5. That upon signing the guarantee, with the lending institution for the sum specified opposite the guarantors' name set forth below, each guarantor shall be issued the following: A Certificate of Indebtedness of the corporation [Buccaneer] in the amount of $250 for each $1,000 so guaranteed bearing interest thereon at an annual rate of 8% per annum, that the corporation [Buccaneer] shall reserve the right to retire the debt which is evidenced by the certificate of indebtedness, by the payment of the face amount of such certificate of indebtedness and any accumulated interest thereon; and further, that interest shall be

paid annually upon the fact amount of said certificate of indebtedness in the event the debt is not retired by the corporation [Buccaneer], subject, however, to the right of the corporation [Buccaneer] to defer payment of the first installment of interest until 18 months from the date said radio station commences operation on the air, that thereafter interest shall be due and payable on the anniversary date of the issuance date of the said certificate of indebtedness.

6. That for the purpose of the following paragraph, default shall be defined as follows:

(a) Failure to pay the lending institution any scheduled repayment of the debt created by the corporation [Buccaneer] borrowed from the guaranteed fund and the lending institution sends due notice to the corporation [Buccaneer] and the guarantors, the corporation [Buccaneer] is in default.

(b) If any of the money borrowed from the guaranteed fund is utilized for capital expenditure and not for operating expenses, as herein specified, it shall be considered a default.

7. That in the event the corporation [Buccaneer] defaults, the guarantors shall, by written notice, notify the corporation [Buccaneer] that the corporation [Buccaneer] is in default, that the corporation [Buccaneer] shall have a period of Ninety (90) days from the time of sending of said written notice in which to correct and cure the default. That at the end of said Ninety (90) days, if the default is not corrected or cured, the undersigned, Francis C. Shoupe, Jr. and Kenneth A. Dodd, agree to deliver to a trustee to be nominated by the guarantors all of the common stock which they own together with the voting rights of said common stock. The trustee shall hold the said common stock and vote the same in accordance with the direction of the guarantors. [That appointment of each trustee shall be subject to prior Federal Communications Commission approval as an involuntary transfer of control and that if the Federal Communications Commission deems it necessary, the Federal Communications Commission shall have the right to approve or disapprove of each of the individual guarantors at the time of said transfer of stock to the said trustee]. That in such eventuality, the guarantors shall be entitled to a weighted vote for the purposes of nominating the trustee and for purposes of directing the trustee to vote the common stock. The weighted vote of each individual guarantor shall be in the same ratio as the amount each individual guarantor has guaranteed hereunder bears to the total amount guaranteed hereunder.

Condition 7 is further amplified by the following:

THAT in the event default, as defined in said agreement, does occur, and it becomes necessary to transfer stock of Buccaneer Broadcasting Ltd., the Guarantors agree that whatever forms the Federal Communications Commission deems necessary for the assignment of license, shall be submitted in due form to the Federal Communications Commission.

14. The $30,000 line of credit and the guarantee agreement constitute a secondary financing arrangement which is tied into the amount of advertising dollars that Buccaneer receives during its first year of operation. If no advertising revenues are received during the first year of operation, then the entire $30,000 could be borrowed. For each dollar of advertising revenues received, the available line of credit would be reduced by the same amount. This is a secondary financing arrangement because advertising revenues would be relied upon first. The line of credit will be used only to the extent that sufficient advertising revenues are not received. Condition 5 in the guarantee agreement, providing for certificates of indebtedness, was included as an inducement to the individual guarantors. Under the terms of the guarantee agreement, Buccaneer may only use the funds borrowed on the line of credit for operating expenses during the first year of operation. If these funds are used for purposes other than operating expenses, a default would result. If default occurs, Condition 7 provides that the guarantors elect a trustee to receive the stock and voting rights of Buccaneer and to vote the stock pursuant to the directions of the guaran-

tors. Prior to the transfer of control of the licensee, application will be made to the Federal Communications Commission for approval. The station would remain in the control of the present stockholders of Buccaneer until after FCC approval was obtained. Each guarantor listed in both the bank letter and the guarantee agreement have signed the guarantee agreement.

15. The National Bank of Geneva has also agreed to loan Buccaneer an additional $2,500. Interest is to be at a rate of 3% above prime. Principal and interest payments are deferred for one year from the date of the loan and are payable for a period of five years thereafter. The bank also requires a security interest in broadcasting and electrical equipment which was transferred to the corporation on February 22, 1972, and which is appraised at $5,000. This equipment is unencumbered and consists of tape recorders, cartridge tape machines and audio consoles.

16. Buccaneer has obtained advertising commitments from the following businesses:

Cass Radio & TV, Inc	$1,500
Fingerlakes Volkswagen	875
National Bank of Geneva	600
Carroll's Restaurant	3,000
Tyman Ford, Inc	1,500
D'Amico Chrysler-Plymouth	1,547
Pumpernickle Restaurant	2,210
Ontario Cable TV	875
Stenzel Cherry-Buick	875
Pedullas Liquor	2,210
Total	15,192

All ten of these merchants entered into agreements with Buccaneer providing for spot advertising. All ten subsequently signed affidavits confirming their prior advertising agreements and setting forth the following information; the amount spent for advertising in the last two years; the percentage of that amount spent for radio advertising; their knowledge of the broadcast area in which Buccaneer will be operating; that their business is located within that area; whether the money agreed to be paid to Buccaneer will be in place of or in addition to their normal advertising budget; that they know the rates they shall pay for advertising; and, that the individual signing the agreement has authority to make such an agreement. In the designation order, the Commission expressed its concern that the advertising agreements contained provisions whereby the advertiser could terminate the agreement upon written notice to Buccaneer. The first five advertisers listed above executed further affidavits which deleted such provisions from their agreements and again expressed their firm commitment to spend the amounts listed for advertising on the station proposed by Buccaneer. The remaining five merchants have not executed such affidavits.

17. Joseph L. Walsh is the brother-in-law of Buccaneer's President, Francis C. Shoupe, Jr. He has agreed to purchase 20 shares of common stock of Buccaneer for $250 per share as well as 20 shares of Buccaneer

preferred stock at $250 per share which together total $10,000. Additionally, he has agreed to loan Buccaneer $5,000 at the current prime rate, principal and interest to be deferred until such time as the station is sufficiently profitable to meet this debt and other debt service retirement. The personal financial statement of Walsh of October 28, 1973 is as follows:

ASSETS

Cash on hand	$500
Accounts receivable	2,000
Listed securities (New York Stock Exchange): 165 shares Boston Edision at $112.00 per share, 409 shares Phillips Van Heusen at $10.50 per share	24,700
Real estate:	
Residence	65,000
Lakefront property	11,000
Automobiles:	
1970 Olds	2,250
1970 Olds	1,250
Household effects and personal property	16,000
Cash value—Life insurance	700
Total assets	123,400

LIABILITIES

Current: Credit cards, Sears, notes and other present obligations	2,700
Long term:	
Mortgage on real estate (New Jersey Savings, Summerville, N.J.)	37,500
FHA home improvement loan	1,700
Note to Franklin State Bank, Millstone, N.J	4,000
Total liabilities	45,900
Net worth	77,500
Total liabilities and net worth	123,400

The income of Joseph L. Walsh after Federal income taxes for the past 2 years has been as follows:

1971	In excess of $15,000
1972	In excess of $15,000

Thus, the net worth of Walsh is established at $77,500, which satisfactorily indicates that he can meet his commitment to Buccaneer.

18. Buccaneer has a commitment of an $11,000 loan from Bogart. The evidence from the record is established that Buccaneer has available other miscellaneous sources of income including money available from the National Bank of Geneva to meet its construction and first year operating expenses. Besides these loans, the balance of Buccaneer's expenses for the first year of operation will be met in part by receipts of advertising revenues. Draws on the line of credit which Buccaneer has will be made to the extent that advertising revenues are not sufficent to meet its monthly payments. The finding is made from the record that Buccaneer has met the financial issue directed to it and particularly Issue 1(b).

19. The available total funds for construction and first year operation of its proposed station are as follows:

Bogart Plumbing & Heating loan	$11,000
National Bank of Geneva loan	10,000
Line of credit—National Bank of Geneva	[1] 22,525
Advertising revenues	[1] 7,475
National Bank of Geneva loan	2,500
Joseph L. Walsh stock subscription	10,000
Joseph L. Walsh loan	2,476
Total	65,976

[1] The $30,000 line of credit is diminished by the availability of advertising revenue on a dollar-for-dollar basis.

CONCLUSIONS

1. Originally Radio Geneva, Inc. and Buccaneer Broadcasting Ltd. were mutually exclusive applicants for new FM broadcasting stations in Geneva, New York. This matter was designated March 21, 1973 for a comparative hearing by an Order of the Commission. Subsequent thereto on September 11, 1973, Radio Geneva and Buccaneer filed a Joint Petition for Approval of Settlement Agreement and Other Relief seeking, *inter alia*, the issuance of an order approving the settlement agreement, dismissing Radio Geneva's application, providing reimbursement to Radio Geneva for expenses incurred in granting its application in an amount not to exceed $4,500 and granting Buccaneer's application. Pursuant to pleadings filed and an oral argument held, at a prehearing conference on October 24, 1973, the ruling was made that a hearing would be held on Issue 1 only and that a ruling on the Joint Petition would be deferred. The hearing was held on October 31, 1973 and the record was closed on November 27, 1973 by an order released November 28, 1973.

2. At the time of the hearing, Buccaneer had paid $3,000 in legal fees and had estimated that its total legal fees would be approximately $6,000. The conclusion therefore is reached that Buccaneer's legal fees during the first year of operation will be approximately $6,000.

3. Buccaneer's first year equipment payments, calculated for 12½ months, totals $3,729 and it has been established from the record that Buccaneer's pre-operation equipment and pre-operation expenses will total $650 broken down as follows:

Minor items for building	$100
Electrician—labor	200
Materials for wiring	200
Material for consoles and shelves	150
Total	650

As Shoupe has had prior experience with studio and transmitter installations, the evidence is to the effect that he will do this work personally. Buccaneer's estimated construction costs and first year operating costs totals $54,332. However, Buccaneer will be obligated to Radio Geneva for an additional $4,500 which is due within five days after an unconditional grant of the construction permit is made. Therefore, as it relates to Issue 1(b) the total is $58,832 for Buccaneer's estimated construction costs as modified and first year operating costs.

4. The sources of funds to meet its construction and first year operating costs proposed to be relied upon by Buccaneer are as follows:

Bogart Plumbing & Heating Co. Loan	$11,000
National Bank of Geneva loan	10,000
Line of credit—National Bank of Geneva	30,000
National Bank of Geneva loan	2,500
Advertising revenues	12,650
Stock subscription—Joseph L. Walsh	10,000
Joseph L. Walsh loan	5,000
Total	81,150

5. The Bogart loan will bear interest at the rate of 6% with the provision that the first principal and interest payments are deferred until the 18th month after the loan is made while, on the other hand, the National Bank of Geneva $10,000 loan bearing interest at 9% per annum provides for the interest and principal payments to be deferred until one year after the loan is made. This loan is then repayable over a five year period.

6. The National Bank of Geneva has agreed to extend a $30,000 line of credit upon the following terms and conditions to Buccaneer:

> 1. That Buccaneer Broadcasting Ltd. receive a construction permit issued by the Federal Communications Commission for the construction of an FM radio station in the Geneva, New York area.
>
> 2. That the corporation enter into an agreement at the time of the loan by which the loan shall be repaid on the following basis:
>
> (a) That the line of credit for $30,000 shall be reduced concurrently with advertising revenues received by Buccaneer Broadcasting Ltd. during the first year of actual on-the-air operation on a dollar for dollar basis. At the time the corporation receives the total sum of $30,000 in advertising revenues, the said line of credit shall be exhausted.
>
> (b) That any money borrowed by the corporation pursuant to this line of credit shall bear an interest rate of 3 per cent over prime rate.
>
> (c) That repayment of any principal shall be deferred for a period of one year from the date the corporation first borrows pursuant to this line of credit. However, interest at the aforesaid rate shall be paid during the first year of the loan.[4]
>
> (d) Principal and interest repayment shall be made on a monthly basis over a period of five years.
>
> 3. That the following individuals personally guarantee the line of credit pursuant to the agreeemnt each of them signed, dated the 24th day of May, 1973, which guarantee shall not exceed the sum of money set forth opposite the name of each individual, to wit:[5]

Guarantor:	*Amount*
Carlton K. Brownell	$3,000
Jackson G. DeBolt	3,000
Jackson M. DeBolt	5,000
Gregory J. Rech	3,000
Lawrence R. Hilmire	2,000
Peter Hahn	3,000
Walter C. Gage	3,000
Theodore Bogart	5,000
Raymond D. Gage	3,000

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[4] By letter dated June 6, 1973, the National Bank of Geneva modified this provision by permitting both principal and interest to be deferred for a period of one year from the date the corporation first borrows pursuant to the line of credit.

[5] Each guarantor listed has agreed to guarantee the amounts set forth next to his name.

> 4. That the Board of Directors of The National Bank of Geneva have specifically reviewed the terms of the aforesaid agreement dated the 24th day of May, 1973 by and between Buccaneer Broadcasting Ltd. and the above stated individuals and has approved of the said terms thereof, and has approved the said line of credit herein specified based upon the terms of said agreement and the agreement of the guarantors therein to guarantee their respective proportionate share of this line of credit.

7. Provision is made that this line of credit may be drawn as needed by Buccaneer either through one lump sum or periodic withdrawals. Interest at 3% plus prime does not accrue until monies are actually drawn down. After deferral for one year, principal and interest payments are payable on a monthly basis for a five year period.

8. In addition to the $30,000 line of credit just discussed, the Geneva Bank has agreed to loan the applicant an additional $2500 at an annual interest rate of 3% plus prime. The security for this loan will be certain personal property in possession of Buccaneer with an appraised value of $5,000.

9. As to advertising revenues, it is established that Buccaneer has firm commitments in the amount of $7,475 from five business houses. It has entered into agreements with ten merchants for advertising totaling $15,192 but in five of these agreements, provision has been made for termination clauses which precludes for practical purposes the assumption that the $15,192 will all be available for the first year operation. Therefore, for this Initial Decision, it is concluded that advertising revenues in an amount of $7,475 will be available from the following sources:

Cass Radio & TV, Inc.	$1,500
Fingerlakes Volkswagen	875
National Bank of Geneva	600
Carroll's Restaurant	3,000
Tyman Ford, Inc.	1,500
Total	7,475

10. Joseph L. Walsh has subscribed to stock in Buccaneer totaling $10,000 along with a commitment to loan the corporation $5,000 at the current prime rate. The principal and interest payments will be deferred until such time as the new station is sufficiently profitable to meet this debt and other debt service retirement. The finding has heretofore been made that the net worth of Walsh as of October 28, 1973 was $77,500 represented by total assets of $123,400 less total liabilities of $45,900. It is manifestly clear that Walsh has adequate assets to meet his commitments to Buccaneer.

11. Buccaneer, from the evidence, will need $58,832 to meet its construction and first year operating costs and payments to Radio Geneva. That Buccaneer has adequate funds available to meet its needs for construction and first year operation costs is disclosed by the following sources of revenue, to wit:

Bogart Plumbing & Heating loan	$11,000
National Bank of Geneva loan	10,000
Line of credit—National Bank of Geneva	[1] 22,525
Advertising revenues	[1] 7,475
National Bank of Geneva loan	2,500
Joseph L. Walsh stock subscription	10,000
Joseph L. Walsh loan	2,476
Total	65,976

[1] The $30,000 line of credit is diminished by the availability of advertising revenue on a dollar for dollar basis.

12. The conclusion there is that Buccaneer Broadcasting Ltd. has met the financial issue directed to it and is financially qualified to construct and operate its proposed FM broadcasting station at Geneva, New York.

13. In view of the foregoing Findings of Fact and Conclusions of Law, and upon careful evaluation of the entire record in this proceeding, it is concluded that the Joint Petition for Approval of Settlement Agreement and Other Relief filed on behalf of Radio Geneva, Inc. and Buccaneer Broadcasting Ltd. on September 11, 1973 IS APPROVED, the application of Radio Geneva, Inc. for a new FM broadcasting station at Geneva, New York IS DISMISSED, with prejudice, the provision for reimbursement in the Settlement Agreement by Buccaneer Broadcasting Ltd. to Radio Geneva, Inc. for expenses incurred in prosecuting its application in an amount not to exceed $4,500 IS APPROVED, and the application of Buccaneer Broadcasting Ltd. for a construction permit for a new FM broadcasting station at Geneva, New York IS GRANTED.

Accordingly, IT IS ORDERED that unless an appeal to the Commission from this Initial Decision is taken by the applicants or the Commission reviews the Initial Decision on its own motion, in accordance with the provisions of Section 1.276 of the Commission's Rules, the Joint Petition for Approval of Settlement Agreement and Other Relief, filed on behalf of Radio Geneva, Inc. and Buccaneer Broadcasting Ltd. on September 11, 1973, IS APPROVED, the application of Radio Geneva, Inc. for a new FM broadcasting station at Geneva, New York IS DISMISSED, with prejudice, the provision for reimbursement in the settlement agreement by Buccaneer Broadcasting Ltd. to Radio Geneva, Inc. for expenses incurred in prosecuting its application in an amount not to exceed $4,500 IS APPROVED, and the application of Buccaneer Broadcasting Ltd. for a construction permit for a new FM broadcasting station at Geneva, New York, IS GRANTED.

Jay A. Kyle,
Administrative Law Judge,
Federal Communications Commission.

FCC 73-1183

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of RADIOHIO, INC. For Renewal of License for Stations WBNS, and WBNS-FM, Columbus, Ohio and WBNS-TV, INC. For Renewal of License for Station WBNS-TV, Columbus, Ohio	File Nos. BR-290 and BRH-852

MEMORANDUM OPINION AND ORDER

(Adopted November 14, 1973; Released December 4, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING

1. The Commission has before it for consideration: (1) the above applications for renewal of licenses for Stations WBNS-AM-FM-TV, Columbus, Ohio; (2) a Motion to Defer Consideration of Grants of Renewals, filed August 31, 1973, by the Columbus Broadcasting Coalition (hereinafter petitioner); and (3) an Opposition to the Motion to Defer Consideration of Grants of Renewal, filed September 12, 1973, by RadiOhio, Inc., licensee of Stations WBNS-AM-FM, and WBNS-TV, Inc., licensee of Station WBNS-TV (hereinafter licensees).

2. The Commission's records disclose that in July, 1970, the licensees timely filed applications for renewal of their licenses for the WBNS stations. In August, 1970, petitioner filed a petition to deny these applications. By way of summary, petitioner alleged that the licensees had failed to adequately ascertain community problems, had failed to adequately serve the needs and interests of Columbus' black community, and had discriminated against blacks in their programming and employment practices. Additionally, petitioner alleged that the licensees enjoyed monopolistic control over the print and broadcast media in Columbus and had abused this control.

3. By Memorandum Opinion and Order, FCC 72-1171, adopted December 20, 1972, released January 3, 1973, we denied petitioner's petition to deny and granted the license renewals for the WBNS stations for terms expiring October 1, 1973. *RadiOhio, Inc.*, 38 FCC 2d 721 (1973). Petitioner subsequently appealed our decision to the United States Court of Appeals for the District of Columbia Circuit (*Columbus Broadcasting Coalition* v. *Federal Communications Commission*, D.C. Cir. Case No. 73-1074), which appeal is still pending. Then, on June 29, 1973, the licensees timely filed applications for renewal of their licenses for the WBNS stations.

4. In the instant motion, petitioner requests that we withhold action of the license renewal applications for the WBNS stations pending completion of judicial review of our *RadiOhio, Inc.* decision, *supra.* Petitioner states that it would be improper to act on the 1973 applications at this time because the Commission's prior action granting the 1970 applications is not yet final. Alternatively, and in the event that we deny its motion to defer action, petitioner requests that it be allowed an additional thirty days from the date of issuance of such denial to file a petition to deny the 1973 applications for renewal. Petitioner states in support of this aspect of its request that the matters raised in its 1970 petition to deny are still applicable to the 1973 applications.

5. In opposition, the licensees resist both aspects of petitioner's motion. In sum, the licensees state that to be successful in deferring consideration of their current renewals, or extending the deadline for filing petitions to deny against them, petitioner must make specific allegations of misconduct during the current license term to satisfy the requirements of Section 309(d) of the Communications Act, 47 U.S.C. 309(d). Failing this, the licensees state, conclusory comparisons between the matters raised in the 1970 proceedings and the matters contained in the 1973 applications cannot be deemed good cause.

6. Petitioner's motion will be denied. Petitioner is asking the Commission to withhold action on the above-captioned applications while it prosecutes its appeal in *Columbus Broadcasting Coalition* v. *Federal Communications Commission, supra.* However, there is nothing in the Communications Act which requires the strict maintenance of the status quo pending the disposition of an appeal, even as among the parties to it. *Evans* v. *Federal Communications Commission*, 113 F. 2d 166, 169 (D.C.Cir. 1940). Indeed, if petitioner is successful on its appeal, Section 402(h) of the Communications Act, 47 U.S.C. 402(h), provides that "[i]n the event that the court shall render a decision and enter an order reversing the order of the Commission, it shall remand the case to the Commission to carry out the judgment of the court and it shall be the duty of the Commission, in the absence of proceedings to review such judgment, to forthwith give effect thereto, and unless otherwise ordered by the court, to do so upon the basis of the proceedings already had and the record upon which said appeal was heard and determined." Thus, it is clear that petitioner's interests are protected. However, in the meantime, we see no reason why we should further delay action on the above-captioned applications. This is particularly so since the petitioner has failed to show how it will suffer irreparable injury or how the public interest would adversely be affected if the applications are processed and acted upon in an orderly manner.

7. Further, petitioner has failed to demonstrate good cause for waiver of the petition to deny cut-off date specified in Section 1.580(i) of the rules. Petitioner merely contends that the issues raised in the 1970 proceeding are equally applicable to the 1973 applications and, accordingly, attempts to incorporate by reference all the material filed in the 1970 proceeding. However, in *RadiOhio, Inc., supra*, we held that petitioner failed to establish a substantial and material question

of fact regarding the 1970 applications for renewal of the licenses for the WBNS stations which required exploration in an evidentiary hearing. We find nothing in the instant motion which would affect the validity of our *RadiOhio, Inc.*, decision, *supra*. Further, the above-captioned applications speak of a different time and, presumably, raise different questions. As such, it is incumbent upon a petitioner to come forward with some reasonable specificity in support of the requested action and we will not presume that the questions raised in the 1970 proceeding are applicable to the 1973 applications.[1] To hold otherwise appears to us to be in direct contradiction to the administrative purposes and procedures set forth in Section 309(d) of the Communications Act and Section 1.580(i) of the Commission's implementing rules.

8. In view of the above, we find that petitioner has failed to advance sufficient reasons for either deferring consideration of the above-captioned applications or extending the cut-off date for filing petitions to deny them.[2] We further find, upon our consideration of the above-captioned applications, that RadiOhio, Inc., and WBNS–TV, Inc., are qualified to remain broadcast station licensees and that a grant of the above-captioned applications would serve the public interest, convenience and necessity.

9. Accordingly, IT IS ORDERED, That the Motion to Defer Consideration of Grants of Renewal, filed August 31, 1973, by the Columbus Broadcasting Coalition, IS DENIED in all respects.

10. IT IS FURTHER ORDERED, That the above-captioned applications for renewal of the licenses for Stations WBNS–AM–FM–TV, Columbus, Ohio, ARE GRANTED for terms expiring October 1, 1976, subject to the outcome of *Columbus Broadcasting Coalition* v. *Federal Communications Commission*, D.C. Cir. Case No. 73–1074.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

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[1] To this end, petitioner also requests that the material submitted in the 1970 proceeding and the instant motion be considered as an informal objection. 47 C.F.R. 1.587. However, petitioner's allegations lack the requisite specificity to require further administrative inquiry. Further, broadcasters have a large area of discretion in programming their stations. *The Evening News Association*, 35 FCC 2d 366, 392 (1972). To the extent that petitioner has questioned the amount and scheduling of WBNS–FM's programming, petitioner has failed to demonstrate that the public interest has been adversely affected or that the licensee has abused its overall discretion in the selection, presentation and scheduling of program material.

[2] With regard to petitioner's allegations, including the adequacy of the programming of the WBNS stations, petitioner has failed to show why its concerns could not have been set forth in detail in a timely filed petition, particularly since the applications were timely filed and the licensees complied with the publication requirements of Section 1.580 of the rules.

FCC 74R-103

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ROSEMOR BROADCASTING CO., INC., STATESBORO, GA.	Docket No. 19887 File No. BP-19424
SOUTHEAST RADIO, INC., STATESBORO, GA.	Docket No. 19888 File No. BP-19489
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted March 20, 1974; Released March 21, 1974)

BY THE REVIEW BOARD: BOARD MEMBER NELSON ABSENT.

1. This proceeding involves the mutually exclusive applications of Rosemor Broadcasting Company, Inc. (Rosemor) and Southeast Radio, Inc. (Southeast) for construction permits to establish a new standard broadcast station at Statesboro, Georgia. By Order, 38 FR 34535, published December 14, 1973, the Chief of the Broadcast Bureau, acting under delegated authority, designated the applications for hearing on a standard comparative issue. Presently before the Review Board is a motion to enlarge issues, filed January 2, 1974, by Southeast, requesting the addition of studio location, site availability and staffing issues against Rosemor.[1]

STUDIO LOCATION ISSUE

2. In requesting the addition of a studio location issue, Southeast presumes Rosemor's studio will be located at its proposed transmitter site which is located 3.5 miles from Statesboro, the proposed community license.[2] Southeast argues that Rosemor's proposed studio location is not sufficiently accessible to the public to carry out its programming proposals for the following reasons: (1) the proposed antenna/studio site is located 3.3 miles from Statesboro; (2) part of the road to the location is unpaved and the site is more than a quarter of a mile from any road; and (3) there is no public transportation in

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[1] Also before the Review Board are the following related pleadings: (a) a letter, filed January 9, 1974, by Southeast; (b) the Broadcast Bureau's comments, filed January 23, 1973; (c) opposition, filed January 23, 1974, by Rosemor; (d) reply, filed February 4, 1974, by Southeast; and (e) petition for leave to file response and response to (d) above, filed February 21, 1974, by Rosemor.

[2] Southeast supports its presumption by noting that although Section V-A, page 1 of Rosemor's application states that its studio will be located in Statesboro at a site to be determined, Rosemor has not indicated in Section III, page 1, under construction costs, any provision for purchase or rental of land or a building in Statesboro. Furthermore, Rosemor has provided $30,000 for a building at the transmitter site which, Southeast contends, is sufficient to build a transmitter and a studio. Therefore, Southeast concludes that Rosemor intends to locate its studio at its proposed transmitter site.

the area.[3] Southeast further notes that Rosemor has proposed public service programming which affords groups, organizations and individuals opportunities to use the station's facilities and provides for group discussion programs. However, Southeast argues that the effectuation of these program proposals hinges to a large extent on the accessibility of Rosemor's facilities. Here, Southeast argues, the proposed site is both "inconsistent with the station's operation in the public interest" and "inadequate for the proposal". Petitioner cites *Cleveland Broadcasting, Inc.*, 7 FCC 2d 680, 683, 9 RR 2d 941 (1967), in support.

3. In opposition, Rosemor asserts that it intends to locate its studio at its proposed transmitter site and that this site is accessible to the public.[4] To support its assertion, Rosemor states the following:[5] all but 0.3 mile of the road leading from Statesboro to the site is paved; the unpaved 0.3 mile section is a "good, all weather" public road maintained by Bulloch County; and in the event Rosemor's application is granted, the county will maintain the road extending beyond the 0.3 mile section should Rosemor's studio transmitter site be located thereon. Although Statesboro has no public bus service, Rosemor asserts, there are several taxicab companies operating in Statesboro. Rosemor submits affidavits of Albert J. Nesmith, a driver with Donaldson Brothers Cab Company of Statesboro, Robert J. Donaldson, co-owner of Donaldson, and James Hall, owner-operator of James Hall Taxi of Statesboro in support. Rosemor also submits an affidavit from Winfield J. Lee, Tax Commissioner of Bulloch County, dated January 9, 1974, averring to the number of private automobiles in the county. This information, Rosemor argues, demonstrates that there is approximately one private car for every two inhabitants. Rosemor concludes that there is sufficient accessibility to its proposed site.

4. The Broadcast Bureau, in its comments opposing addition of petitioner's requested issue, argues that Southeast has not made the "convincing showing" required to warrant addition of a studio location issue, citing *Cleveland Broadcasting, Inc., supra.* The approximate four miles by road from Statesboro to the proposed studio location does not present an "insurmountable obstacle" to anyone wishing to appear at the station, the Bureau argues.

5. In reply, Southeast argues that Rosemor's "let them use cars" opposition is not responsive to Southeast's allegations. Southeast argues that taxicabs are expensive, and that attempting to secure a taxicab back from the studio "may prove somewhat frustrating." Census statistics show, Southeast maintains, that 1280 households in Bul-

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[3] In a letter to the Board dated January 9, 1974, Southeast submits an affidavit from A. Joe McGlamery, its president. In his affidavit, dated January 7, 1974, McGlamery avers that the site is located "nearly 3.5 miles from Statesboro by road" and that there is "no local bus company offering local public transportation." Although this affidavit should have accompanied Southeast's motion to enlarge, its receipt is unopposed by any party, and the Board will therefore accept it.

[4] Rosemor asserts, however, that Rule 73.30(a) would permit it to locate its studio in Statesboro if it so chose.

[5] The above information is contained in an affidavit, dated January 14, 1974, from Emit C. Deal, Chairman of the Bulloch County Board of Commissioners of Roads and Revenues, attached to Rosemor's opposition pleading. Also, Rosemor submits the affidavit, dated January 14, 1974, of Mrs. Rachel W. Parrish, Secretary to the Superintendent of the Department of Education, Bulloch County, Statesboro, Georgia, who avers to the excellent condition of county roads.

loch County and 671 in Statesboro or more than 13% of the total households have no cars and that another 4,813 households in Bulloch County have only one car.[6]

6. The Review Board will deny petitioner's requested studio location issue. To warrant addition of a studio location issue, a showing must be made that the applicant's proposal is seriously deficient. See *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 397, 5 RR 2d 1901, 1912 (1965). The Board amplified this requirement in *Cleveland Broadcasting, Inc., supra.*, 7 FCC 2d at 683, 9 RR 2d at 946, when we stated:

> . . . [S]tudio location is not a comparative factor absent a convincing showing that the proposed studio location would be (1) inconsistent with the station's operation in the public interest, or (2) inadequate for the proposal.

In our opinion, Southeast has not made a convincing showing that Rosemor's studio location is inadequate for its programming proposals because of inaccessibility. The affidavit submitted by Rosemor from the county commissioner in charge of roads affirms that all-weather, county maintained roads will provide year-round accessibility to the proposed studio. It appears that Rosemor intends to serve a rural area where the residents principally rely upon their own means of transportation, and that such transportation is available is borne out by the number of licensed vehicles in relation to the population in the county. Moreover, Rosemor has established the availability of taxicab service in the area. Thus, in our view, the public does have direct access to the proposed studio location.[7] Accordingly, no studio location issue, comparative or absolute, is warranted.

SITE AVAILABILITY ISSUE

7. Southeast asserts that serious doubt exists in the event Rosemor's application is granted, that its transmitter site will be available in time for it to complete construction of its facilities within the twelve month limit prescribed by Commission Rule 1.598(b). To support its assertion, Southeast submits that paragraph 8 of Rosemor's Option Agreement for the land where the transmitter and station are to be located provides that "any and all growing crops (other than timber) that may have been planted by OPTIONORS shall not be disturbed by ROSEMOR until the same are harvested by OPTIONORS in the regular and ordinary course of events." This provision, Southeast concludes, may delay Rosemor's construction, thereby preventing it from complying with Section 1.598(b) of the Rules.

8. In opposition, Rosemor asserts that it has obtained an Amendment to its Option Agreement giving it the unqualified right to take

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[6] Rosemor submits a response to Southeast's reply, arguing that the latter contains new material in that it discusses the studio location as a strictly comparative factor. We will reject the pleading as unauthorized in accordance with Rule 1.45(c). In our view, a request for an absolute or qualifying issue in logic subsumes a comparative issue, as well, in a comparative case; moreover, the Commission has in the past treated the question of studio availability as a comparative, rather than qualifying factor, in any case. See paragraph 6, *infra*.

[7] Although petitioner relies on *Cleveland Broadcasting, Inc., supra*, the Board there declined to draw a comparative distinction between an applicant locating its studio 4.5 miles beyond the city limits and a mile from the nearest bus stop and an applicant whose proposed studio was to be located in the downtown area.

possession of any unharvested, growing crops for a fair and reasonable price at any time during the term of the Option, any renewals thereof, or during the term of any lease. This amendment, Rosemor argues, should remove the question raised by Southeast as to Rosemor's ability to comply with Rule 1.598. In addition, Rosemor states that there are no crops growing at the present time on any of the optioned premises and submits a supporting affidavit from the optionors. The Bureau, in its comments, also opposes the issue, arguing that it is based on pure speculation.

9. In reply, Southeast asserts that Rosemor's opposition raises new questions as to the availability of its site. Rosemor claims that the county intends to maintain the road running through the transmitter site location which, Southeast argues, must mean the road is county owned; consequently, a question is raised whether Rosemor has obtained permission to use the county's property. Furthermore, contends Southeast, Rosemor's engineering proposal shows a ground system running through the road and guy wires running over the road, which raises a question as to whether its engineering proposal is deficient.

10. The Review Board will deny the requested site availability issue. We believe Rosemor's opposition pleading answers Southeast's allegations that Rosemor might not be able to complete construction of its transmitter facilities within the twelve month construction period prescribed by Rule 1.598(b) because its option agreement contains a crop removal provision. Rosemor has obtained an amendment which would allow it to purchase and remove any crops which may be growing on the proposed site (although none are presently growing) so that it will not be delayed in commencing construction.[8] Southeast has not shown, therefore, that Rosemor failed to provide the Commission with "reasonable assurance" that its transmitter site will be available. Accordingly, addition of the requested issue is not warranted. See *Dowric Broadcasting Company, Inc.*, 35 FCC 2d 589, 24 RR 2d 735 (1972); and *North American Broadcasting Co.*, 15 FCC 2d 984, 15 RR 2d 367 (1969).

STAFFING ISSUE

11. In support of this requested issue, Southeast asserts that Rosemor's proposed staff of 11 employees, 7 full time and 4 part time, is too "minimal" to effectuate its programming proposals. Rosemor proposes to operate 126 hours per week including substantial amounts of locally originated programming, according to Southeast. However, Southeast alleges, Rosemor proposes only one engineer-announcer, two full time announcers and one part time announcer to man the station. Furthermore, none of Rosemor's principals, three of whom will be full time employees, have any broadcast experience, except Ruth Alexis,[9]

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[8] The Board will not entertain new matter raised in reply pleadings; therefore, we will not consider whether Rosemor requires permission from the county to front its site on a public road. Nor is Southeast's request for an engineering issue, raised for the first time in its reply, a proper matter for our consideration. We also reject Rosemor's response to this reply as an unauthorized pleading. See note 6, *supra*.

[9] Ruth Payton Alexis is secretary, director and 10% stockholder in Rosemor.

who has had a half hour weekly program on a local station, and none of the principals have an FCC operator's permit, Southeast maintains. For these reasons, petitioner submits, a staffing issue is required.

12. In opposition, Rosemor argues that Southeast's request for a staffing issue is "ludicrous on its face". Rosemor states that it has proposed 3 full time owner participants "who will work in administration, sales and programming"; 3 full time announcers (one of whom will have his first class radio-telephone license); one part time announcer; one full time administrative employee; one full or part time sales employee; one part time copy writing employee; and a part time general employee. To meet its proposed 126 hour broadcast week, Rosemor asserts, it will have 140 hours of announcer time per week. Finally, Rosemor argues, it has sufficient unallocated funds to hire additional staff should that prove necessary.

13. In reply, Southeast argues that its request for a staffing issue is premised on the minimal number of operational employees proposed by Rosemor. Although Rosemor provides for sufficient hours of announcer time per week, Southeast argues that it is "extremely doubtful" that Rosemor's engineer-announcer will have time to carry out his other duties or that the other announcers will have time to perform other duties such as writing or preparing commercials.

14. The Review Board believes that the petitioner's allegations are insufficient to warrant the inclusion of the requested staff adequacy issue. Petitioner's request is procedurally deficient in that no supporting affidavits are offered from persons having experience or personal knowledge of such matters as required by Commission Rule 1.229(c); and Southeast engages in speculation and generalizations about the staff's effectuation of Rosemor's programming proposals. See *Fred Kaysbier*, 19 FCC 2d 636, 17 RR 2d 389 (1969). On the merits, we agree with the Broadcast Bureau that there is nothing inherently improbable in Rosemor's plan to broadcast a 126 hour week with a staff of eleven employees, including three and one half operating personnel and four full time and three part time personnel in administrative and supportive functions. See *Jay Sadow*, 27 FCC 2d 248, 20 RR 2d 1171 (1971), and *Martin Lake Broadcasting Company*, 23 FCC 2d 721, 19 RR 2d 227 (1970). As Rosemor notes in its opposition, its proposal includes 140 hours of announcer time per week to cover a 126 hour broadcast week, and it is purely speculative for Southeast to argue that operational employees would be too burdened to carry out their overall functions. The Board, therefore, will not add the requested staff adequacy issue.

15. Accordingly, IT IS ORDERED, That the petition for leave to file response, filed February 21, 1974, by Rosemor Broadcasting Company, Inc., IS DENIED; and

16. IT IS FURTHER ORDERED, That the motion to enlarge issues, filed January 2, 1974, by Southeast Radio, Inc., IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON D.C. 20554

In Re Notification to
HORACE P. ROWLEY, III
Concerning Request for Public Information

MARCH 11, 1974.

HORACE P. ROWLEY, III, Esq.,
416 East 81st Street,
New York, N.Y. 10028

DEAR MR. ROWLEY: This is with reference to your letter of September 25, 1973, in which you requested information regarding the staff of the Complaints and Compliance Division of the Broadcast Bureau. Each question you asked will be answered separately.

1. What are the names of the members of the Division who spend a substantial part of their time administering complaints involving the Fairness Doctrine, Equal Time, Personal Attack, and Political Editorial?

As of February 19, 1974 the following individuals spend all of their time administering these types of complaints:

[NAMES SUPPLIED]

In addition, the following individuals engage in review and supervision in regard to these matters:

[NAMES SUPPLIED]

The above named individuals are, of course, supported by secretarial staff. It should be emphasized that the number of individuals assigned to this area varies greatly depending upon the number of complaints being processed. Additionally at those times when the administration of these complaints becomes especially urgent, additional personnel are assigned. This is particularly true in the period preceding elections.

2. Which members are lawyers?

All of the individuals named above are lawyers with the exception of

[NAMES SUPPLIED]

3. How many of these lawyer-members have ever failed any bar examination?

The Federal Communications Commission does not compile or possess records which indicate whether or not any attorney in the employ of the Commission has ever failed a bar examination. Attorneys who are hired by the Commission without having become members of the bar of any state, the District of Columbia or Puerto Rico receive fourteen-month conditional appointments as law-clerk trainees. If they succeed in becoming members of the bar, they are redesignated General Attorneys. If after fourteen months they have not become members of the bar, their appointments are terminated. Prior to this time they are not required to inform the Commission of whether or not they have become members of the bar. Therefore, the Commission does not maintain records indicating which current employees have failed a bar examination.

4. Do law students or law interns administer these classes of complaints?

No law students or law interns administer these classes of complaints.

Sincerely yours,

John M. Torbet,
Executive Director.

FCC 74-250

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF § 1.294, RULES OF PRACTICE AND PROCEDURE

ORDER

(Adopted March 13, 1974; Released March 19, 1974)

BY THE COMMISSION:

1. Section 1.294(b) of the Rules of Practice and Procedure provides, as a general rule, that 4 days are allowed for filing oppositions to pleadings filed in hearing proceedings and that replies to oppositions will not be entertained. Section 1.294(c) lists four types of pleadings to which the 4-day rule does not apply, one of which is petitions to intervene. In the case of pleadings listed in 1.294(c), 10 days are allowed for oppositions and 5 additional days are allowed for replies.

2. The questions presented in petitions to intervene are not typically more difficult or complex than those presented in pleadings to which the 4-day rule now applies (e.g., petitions to amend an application). We think that they can be dealt with fairly and adequately under the 4-day rule, and that the delay of hearing proceedings occasioned by the longer pleading periods which currently apply is not warranted.[1] This being the case, we are amending Section 1.294 to apply the 4-day rule to petitions to intervene.

3. Authority for this amendment is contained in Sections 4(i) and (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (j) and 303(r). Because the amendment is procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

Accordingly, IT IS ORDERED, effective March 27, 1974, That Section 1.294 of the Rules of Practice and Procedure is amended as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] Under Section 1.4, the amount of time actually allowed can be as much as 11 days for a 4 day pleading, 12 days for a 5 day pleading, and 17 days for a 10 day pleading. Thus, at present, as many as 29 days may pass before action can be taken on a petition to intervene. With the amendment, the maximum delay would be 11 days.

APPENDIX

Part I of Chapter I of Title 47 of the Code of Federal Regulations is amended to revoke Section 1.294(c)(2), to read as follows:

§ 1.294 Oppositions and replies.

* * * * * * *

(c) * * *

(2) [Reserved]

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FCC 74-225

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTIONS 81.361 AND 83.360 OF THE FCC RULES AND REGULATIONS

ORDER

(Adopted March 13, 1974; Released March 18, 1974)

BY THE COMMISSION:

1. By this Order, it is intended to delete certain obsolete rule requirements regarding issuance of ship station licenses in order to bring the rules into conformity with current Commission licensing policy and practice and to expedite ship station application and licensing procedures.

2. Specifically, the "showing" requirements of Sections 81.361(b)(1) and 83.360(b)(1) are hereby deleted. This Order also deletes the provisions of Section 83.360(b)(3) which normally limits a grant of frequencies to one from each band.

3. These requirements are holdovers from past practices of the Commission stating specific frequencies on ship station licenses and of requiring a showing of need prior to authorizing use of frequencies below 27.5 MHz. Current Commission policy and practice favors a "flexible" ship station license which emphasizes the most versatile and wide use of frequencies while encouraging their use in conformity with the rules. Requiring such showings and listing specific frequencies no longer serves a useful purpose.

4. Because these deletions are editorial in nature, intended to reflect current license processing practices and because they eliminate restrictions hitherto applied, the prior notice, procedure and effective date provisions of 5 U.S.C. § 553, do not apply. Authority for this amendment appears in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. In view of the above, IT IS ORDERED, That the rule amendments set forth in the attached Appendix shall be adopted effective March 27, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-277

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Notification to
SOUTH CENTRAL BROADCASTERS, INC.
Concerning Contest Conducted by Station
KJPW, Waynesville, Mo.

MARCH 14, 1974.

SOUTH CENTRAL BROADCASTERS, INC.,
Radio Station KJPW,
Post Office Box 518,
Waynesville, Mo. 65583

GENTLEMEN: This is in reference to the scavenger hunt contest conducted by Station KJPW, Waynesville, Missouri.

Based on information you provided the Commission, it appears that the scavenger hunt competition was presented from June 25 through 30, 1973. The station published a list of fifty items which were to be collected and brought to the station for authentication by a certain deadline. The person submitting the most complete entry of validated items would win $500. In case of a tie, the earliest most complete entry submitted would win. Because your list did not contain sufficiently detailed information about some of the items, contestants experienced difficulties in determining the exact nature of the items and began querying the station individually in this regard. In response to these inquiries you began making interpretative decisions and, as you have stated to the Commission, you were willing "to accept any reasonable and good faith interpretation of items requested on the scavenger hunt list." You did not, however, publish or broadcast timely information regarding these decisions for the guidance of the general public and, in fact, apparently refrained from taking such action because you believed that it would only add to the confusion.

Item 30 on your list read, "An Official 1973 Missouri State Highway Map." You have informed the Commission that when the station management compiled the list it was assumed that the map would be one published by the State of Missouri. In judging entries, however, you accepted as satisfactory groups of items brought to the station which included maps that had been published by a petroleum products company.

No person offered more than forty-nine of the fifty items for validation. Mr. Darrell Nickels (in whose behalf a complaint was filed with the Commission) made not only the earliest but, insofar as can be determined from the information you have furnished, the only submission of forty-nine items that included an official Missouri State Highway map as called for on your list. Nonetheless, on the basis of priority of time in submission, you awarded the prize of $500 to another contestant whose forty-nine items included a map distributed by an oil company rather than an official State of Missouri map.

The Commission has stated that any contests conducted by a station should be conducted fairly and substantially as represented to the public, and that a failure to do so falls short of the degree of responsibility expected of licensees. *KOLOB Broadcasting Co.*, 36 FCC 2d 586 (1972). It appears that the scavenger hunt competition was not properly conducted in that you failed to broadcast or publish complete and clear information regarding the acceptability of entries for validation and to provide the public with full and timely information concerning the many rule interpretations you were either making or accepting from time to time in the evaluation of entries. A uniform standard of judging was not applied in selecting the winners. The problems in conducting and judging the contest arose, as you have yourself stated, because you failed to anticipate the difficulties that were experienced. The Commission is of the view that your conduct of the contest fell short of the required degree of licensee responsibility and admonishes you for this shortcoming.

By Direction of the Commission,
Vincent J. Mullins, *Secretary.*

FCC 74-264

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SYSTEMS TV, INC., NEW HAVEN, CONN. HAMDEN, CONN. WEST HAVEN, CONN.	CAC-1601/CSR-324 (CTO49) CAC-1602/CSR-325 (CTO50) CAC-1603/CSR-326 (CTO51)
BRIDGEPORT COMMUNITY ANTENNAE TELEVISION CO., ORANGE, CONN. WOODBRIDGE, CONN. MILFORD, CONN.	CAC-1666/CSR-321 (CTO57) CAC-1667/CSR-322 (CTO58) CAC-1668/CSR-323 (CTO59)
VALLEY CABLE VISION INC., NAUGATUCK, CONN. OXFORD, CONN. BEACON FALLS, CONN.	CAC-1854/CSR-334 (CTO61) CAC-1855/CSR-335 (CTO62) CAC-1856/CSR-336 (CTO63)
COMMUNITY TELEVISION SYSTEMS, INC. WALLINGFORD, CONN. GUILFORD, CONN. NORTH HAVEN, CONN. NORTH BRANFORD, CONN. BRANFORD, CONN. EAST HAVEN, CONN. MADISON, CONN. For Certificates of Compliance	CAC-2699 (CT064) CAC-2700 (CTO70) CAC-2701 (CTO69) CAC-2702 (CTO68) CAC-2703 (CTO67) CAC-2704 (CTO66) CAC-2705 (CTO65)

MEMORANDUM OPINION AND ORDER

(Adopted March 13, 1974; Released March 21, 1974)

BY THE COMMISSION:

1. Systems TV, Inc., Bridgeport Community Antennae Television Company, Valley Cable Vision, Inc., and Community Television Systems, Inc. have filed applications for certificates of compliance to begin cable television service at the above-captioned communities which are located within the Hartford-New Haven-New Britain-

Waterbury television market (#19). The systems propose to offer subscribers the following television broadcast signals:[1]

WHNB-TV (NBC, Channel 30), New Britain, Connecticut
WTIC-TV[2] (CBS, Channel 3), Hartford, Connecticut
WHCT-TV (Ind., Channel 18), Hartford, Connecticut
WEDH (Educ., Channel 24), Hartford, Connecticut
WTNH-TV (ABC, Channel 8), New Haven, Connecticut
WATR-TV (NBC, Channel 20), Waterbury, Connecticut
WCBS-TV (CBS, Channel 2), New York, New York
WABC-TV (ABC, Channel 7), New York, New York
WNBC-TV (NBC, Channel 4), New York, New York
WNEW-TV (Ind., Channel 5), New York, New York
WOR-TV (Ind., Channel 9), New York, New York
WPIX (Ind., Channel 11), New York, New York
WNET (Educ., Channel 13), Newark, New Jersey.

In addition:

All but the Community Television systems propose to carry:
WEDW (Educ., Channel 49), Bridgeport, Connecticut
WXTV (Spanish language Channel 41), Paterson, New Jersey

All but the Valley Cable systems propose to carry:
WKBG-TV (Ind., Channel 56), Cambridge, Massachusetts

Systems TV and Bridgeport propose to carry:
WSBK-TV (Ind., Channel 38), Boston, Massachusetts

Bridgeport and Valley Cable propose to carry:
WNYC-TV (Noncommercial, Channel 31), New York, New York
WNJU-TV (Spanish language, Channel 47), Linden, New Jersey

The Bridgeport systems propose to carry:
WLIW (Educ., Channel 21), Garden City, New York
WSNL-TV (CP, Channel 67), Patchogue, New York

Systems TV proposes to carry:
WEDN (Educ., Channel 53), Norwich, Connecticut
WTVU (CP, Channel 59), New Haven, Connecticut

The Community Television systems propose to carry:
WSMW-TV (Ind., Channel 27), Worcester, Massachusetts

Carriage of all the above signals is consistent with Section 76.61 of the Commission's Rules.[3] Objections and/or petitions for special relief have been filed against each of the referenced applications by Connecticut Television, Inc., licensee of Station WHNB-TV, Capital

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[1] According to the FCC Form 325 submitted by the cable systems, population is approximately as follows:

New Haven	137, 707	Beacon Falls	3, 546
Hamden	49, 357	Wallingford	35, 714
West Haven	52, 851	Guilford	15, 665
Orange	13, 524	North Haven	22, 194
Woodbridge	7, 673	North Branford	10, 778
Milford	156, 542	Branford	22, 524
Naugatuck	23, 034	East Haven	25, 120
Oxford	4, 480	Madison	14, 078

The Systems TV and Bridgeport systems each will have a 60-channel capacity. Valley Cable Vision's systems each will have a capacity of 46 channels. Community Television's systems each will provide 30 channels. Each of Systems', Valley's, and Community's cable systems will provide all required access cablecasting services. Bridgeport's access proposal is discussed at Paragraph 5, *infra*.

[2] Now WFSB-TV.

[3] Carriage of Station WNYC-TV will be authorized in accordance with our opinion in *Valley Cable Vision, Inc.*, 44 FCC 2d 232 (1973).

Cities Broadcasting Corporation, licensee of Station WTNH-TV, and Connecticut Educational Television Corporation, licensee of Stations WEDH, WEDW, and WEDN.[4] Objections directed against all but Community Television's applications were filed by Broadcast Plaza, Inc., licensee of Station WTIC-TV. The cable systems have replied. Metromedia, Inc., licensee of Station WNEW-TV, and American Broadcasting Companies, Inc., licensee of Station WABC-TV, have filed oppositions to Capital Cities' petitions for special relief. Replies to the objections of Connecticut Educational Television Corporation have been filed by Educational Broadcasting Corporation, licensee of Station WNET.

2. In their oppositions, both Broadcast Plaza and Connecticut Television argue that the cable systems' franchises fail to comply with Section 76.31 of the Commission's Rules. In *Valley Cable Vision, Inc.*, 38 FCC 2d 959, *recons. denied*, 40 FCC 2d 191 (1973), we held that franchises granted by the State of Connecticut are in substantial compliance with our franchise standards. Although the subject cable television systems were not parties to that decision, the franchises are identical to, and were issued at the same time as, the franchises considered in *Valley Cable Vision, Inc., supra.* Therefore, these objections will be denied.

3. Connecticut Television and Capital Cities seek special relief in the form of specialized carriage and exclusivity requirements. Connecticut Television has filed the same request for relief in response to each application filed to begin cable service within the Hartford "Area of Dominant Influence (ADI)".[5] Capital Cities has filed similar request for relief in response to many, but not all, of the applications for service within this geographic area. Both Connecticut Television's and Capital Cities' requests have been considered on the merits previously and were denied in *Telesystems Corporation*, FCC 74-160, — FCC 2d — (released February 22, 1974). For the reasons discussed in that Memorandum Opinion and Order, we will deny the subject petitions for special relief.[6]

4. Bridgeport's Milford, Orange, and Woodbridge systems will operate as an integrated "system" with its recently certified Bridgeport and Stratford operations. In *Bridgeport Community Antenna Television Company*, 44 FCC 2d 711 (1973), we found that Bridgeport's proposed dual cable plant, with a 60-channel capacity, technically satisfies the equal bandwidth requirement of Section 76.251(a)(2) of the Rules. We put Bridgeport on notice, however, that if the demand for access services and the operation of Section 76.251(a)(8) of the

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[4] Connecticut Educational Television Corporation (CETC) filed objections to the proposed carriage of Educational Station WNET on all the subject systems and to carriage of Educational Station WLIW on the Bridgeport systems. Systems TV subsequently stated that it "consents to the deletion of television broadcast station WNET from its requested television signal complement". Recently, CETC filed requests that its objections to the other captioned applications be dismissed. Thus, CETC's objections will be dismissed as moot.

[5] According to Connecticut Television, the Hartford ADI consists of Hartford, New Haven, Tolland, Middlesex, and Litchfield Counties.

[6] On February 12, 1974, Connecticut Television filed a "Request for Withdrawal" of their petitions for special relief. However, because we have ruled on the merits of their arguments in *Telesystems Corporation, supra,* we deem it appropriate to rule on those arguments herein.

Rules (expansion of access channel capacity) necessitate the use of the second cable for these required services, that cable must be installed in the home of all subscribers at no additional charge. Similarly, this caveat must apply to Bridgeport's Milford, Orange, and Woodbridge operations.

5. Bridgeport seeks a waiver of Section 76.251 of the Rules, proposing to maintain initially one set of public, governmental, educational, and leased access channels for shared use by the Woodbridge and Orange systems. Each of Bridgeport's other systems will maintain a full complement of separate access channels. For reasons of economy and technology, the systems have been designed to operate as an integrated unit served from an LDS transmitting site at Shelton, Connecticut, with two receiving sites at Bridgeport and Milford. The Milford sub-headend will serve Milford, Woodbridge, and Orange. Woodbridge and Orange are communities of relatively small populations and, it is argued, of considerably smaller population than that of core cities in the major markets. These communities are contiguous and share a political, social, and economic community of interest. It is urged that the access needs of these communities can readily be met by the proposal for shared use.

6. We believe the access proposal offered by Bridgeport is reasonable and consistent with our previous decisions concerning the sharing of access channels in new conglomerate systems. *See, e.g., Saginaw Cable TV Co.*, 39 FCC 2d 496 (1973), and *NewChannels Corporation*, FCC 74-62, — FCC 2d — (released January 31, 1974). In granting the requested waiver, we note that Bridgeport will be providing 21 television broadcast signals on its 60-channel systems, and, thus, the remaining 39 channels will be available for access services should the demand arise.

In view of the foregoing, we find that a grant of each of the subject applications and a waiver of Section 76.251 of the Rules for Bridgeport's Woodbridge and Orange cable systems would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the objections to the captioned applications filed by Broadcast Plaza, Inc. and Connecticut Television, Inc. ARE DENIED.

IT IS FURTHER ORDERED, That the "Objection[s] to Applications for Certificates of Compliance" filed by Connecticut Educational Television Corporation directed against the captioned applications ARE DISMISSED as moot.

IT IS FURTHER ORDERED, That the "Petition[s] for Special Relief" filed by Connecticut Television, Inc. directed against the captioned applications ARE DENIED.

IT IS FURTHER ORDERED, That the "Petition[s] for Special Relief" filed by Capital Cities Broadcasting Corporation directed against the captioned applications ARE DENIED.

IT IS FURTHER ORDERED, That the applications for certificates of compliance (CAC-1601, 1602, 1603) filed by Systems TV, Inc., the applications (CAC–1666, 1667, 1668) filed by Bridgeport Community Antennae Television Company, the applications (CAC–1854, 1855, 1856) filed by Valley Cable Vision, Inc., and the applications (CAC–2699, 2700, 2701, 2702, 2703, 2704, 2705) filed by Community Television Systems, Inc. ARE GRANTED and appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-253

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 73.606(b) OF THE COMMISSION'S RULES, THE TABLE OF TELEVISION ASSIGNMENTS, TO CHANGE CHANNEL 7 AT PONCE, P.R., TO A PONCE-SAN JUAN ASSIGNMENT
General Policy Questions Involved in the Proposal To Move the Transmitter Location of the Ponce, P.R., Channel 7 Station to a Point Closer to San Juan, P.R.

Docket No. 19974

NOTICE OF INQUIRY AND NOTICE OF PROPOSED RULEMAKING OR PROPOSED STATEMENT OF POLICY

(Adopted March 13, 1974; Released March 20, 1974)

BY THE COMMISSION:

INTRODUCTION

1. This proceeding is instituted in order to explore various questions, and possible approaches, involved in a proposal by Ponce Television Corporation (WRIK), licensee of Station WRIK-TV, Ponce, Puerto Rico (Channel 7) to move that station's transmitter location to a point which is closer to San Juan, the major city of Puerto Rico, than to Ponce. The proceeding is prompted by a "Petition for Declaration of Policies with Respect to Television Service in Puerto Rico", filed by WRIK on September 19, 1973 (and opposed by various other parties as mentioned below). The petition follows, by some 15 months, the withdrawal and dismissal with prejudice of WRIK's application to make the above-mentioned move, which had been vigorously opposed by three stations, and designated for hearing on various issues (designated March 1972, Docket 19459; see *Ponce Television Corporation*, 33 FCC 2d 940).

2. As described in the petition (correctly as far as we know), WRIK-TV is one of four Puerto Rican stations which, among them, serve as the originating sources of the bulk of the island's TV programming,[1] the others being WAPA-TV and WKAQ-TV, San Juan, and WKBM-TV, Caguas-San Juan. All have other outlets increasing

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[1] For linguistic and perhaps other reasons, there is virtually no "national" network service (from ABC, CBS and NBC) in Puerto Rico, with the possible exception of some sports events. There is some use of "off-network" material translated into Spanish.

their coverage of the island beyond that possible by direct off-air reception of the main station, particularly in the Western portion; WAPA-TV and WRIK-TV have agreements under which regular stations at Aguadilla and Mayaguez respectively re-broadcast their programs. WKBM-TV has a satellite station at Ponce, and WKAQ-TV uses a number of translators (the other three systems also involve some translators). WRIK-TV claims in its petition that these are in effect Puerto Rico's "networks", and that *competitive equality* among them has the same high importance here as the Commission has recognized generally in connection with the three mainland U.S. national networks, ABC, CBS and NBC. This, it is said, requires both Island-wide coverage *and equal access by the four "flagship" stations to the populous and relatively wealthy San Juan market*, which WRIK-TV does not have because of its greater distance from San Juan than the other three (and terrain obstacles in this generally rugged area).[2]

3. In substance, WRIK asks the Commission to issue a policy statement to the effect that, in its case and any similar Puerto Rican situation, this concept of equality for the flagship stations of Island-wide systems (or networks) is "a matter of high importance not to be cast aside without very strong countervailing reasons". (See Appendix for the complete text of its requested policy statement.) It would have us make this statement even assuming *arguendo* the truth of the allegations against its application made by the opponents and embodied generally in the four Docket 19459 hearing issues particularly pertinent here: (1) "UHF impact" on the future establishment of a San Juan UHF station;[3] (2) "shadowing" problems with respect to coverage of Ponce from the proposed location, which might require "a waiver of a minor technical rule" (Section 73.685(a), concerning determination of the signal intensity over the community of license, and 73.658(b) concerning suitability of transmitter location); (3) possible losses or degradations of television service to areas and populations; (4) that grant of WRIK's application to move site, to a point closer to the larger city of San Juan than to Ponce, might be considered a *de facto* reallocation of the channel to San Juan, "despite the fact that WRIK will continue to provide a local outlet for Ponce."

4. The WRIK "Petition" seeks a statement of policy as mentioned above. However, in a subsequent letter to the staff, petitioner suggested as an alternative the addition of a statement to the rules, as a footnote to Section 73.606(a), as follows:

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[2] WRIK-TV asserts that the public interest is harmed if one of these four program sources is in economic jeopardy, *inter alia* because it might mean the critical impairment or total destruction of the economic viability of the outlying stations to serve as means of local self-expression.

[3] In the Docket 19459 hearing order, this was the first issue, and was put in general terms—whether grant would impair the ability of authorized and prospective UHF stations in the area to compete effectively, or would wholly or partly jeopardize the continuation of existing UHF service. At that time UHF Station WTSJ operated in San Juan, along with satellite stations at Ponce and Mayaguez; however, these three stations ceased operation, and their authorizations were surrendered, in November 1972. An application was tendered for the same San Juan UHF channel at about the time of WRIK's present petition (September 1973); the new San Juan applicant, who opposes the WRIK petition, proposes an English-language service, the same type of operation engaged in by WTSJ. One UHF station is authorized but not operational in Puerto Rico, at Aguadilla, in the northwestern part of the island.

The Commission's policy of providing equal facilities so far as possible to national networks is applicable to Puerto Rican television networks. Accordingly, in the absence of strong countervailing reasons, the Commission will grant authorizations or waivers, or both, to the extent necessary to provide Puerto Rican networks with facilities for equal and adequate access to the principal communities of the island.

BRIEF SURVEY OF PUERTO RICAN TV ASSIGNMENTS AND STATIONS, AND THE HISTORY OF WRIK–TV

5. There are 10 VHF channel assignments in Puerto Rico, of which two (at San Juan and Mayaguez) are used by non-commercial educational stations. One (Ch. 13 at Fajardo) is occupied by an authorized station which has not gone into operation (litigation over a modification application is pending). The remaining 7 assignments are occupied by the two San Juan and one Caguas-San Juan stations mentioned, WRIK–TV and WSUR at Ponce (the latter a satellite of the Cagus-San Juan station) and, in the Western part of the island, WOLE–TV at Aguadilla (with authority to identify with Mayaguez also) and WORA–TV at Mayaguez.[4] There are also 25 UHF assignments, 9 of them reserved for education, of which one unreserved channel at Aguadilla is occupied by an authorized (1972) but not yet operational station, and one at San Juan is applied for (see footnote 3, above). It should be noted that the distances between major communities are comparatively small—e.g., about 47 miles between San Juan (on the northern coast slightly east of center) and Ponce (near the southern coast slightly west of center); but rugged terrain in much of the island prevents direct reception over long distances. The entire island extends slightly more than 100 miles from east to west and about 35 miles north-south.

6. *WRIK–TV*. This station is licensed to Ponce Television Corporation, 80% of whose stock since 1970 has been owned, ultimately, by United Artists Corporation, a major U.S. film producer and distributor. The station went on the air in 1958, and for several years operated from a site close to Ponce and served as a rebroadcast outlet for Station WKAQ–TV, San Juan. In 1967, after Commission approval, it moved its transmitter site to its present location (Cerro Maravilla) 10 miles north and slightly east of Ponce and 35 miles southwest of San Juan. At about the same time it took steps to become an independent programming source, enlarging its staff and building a large studio in San Juan. From this site, it puts a predicted principal-city signal over San Juan as well as Ponce, but in March 1969 the Commission denied an application for authority for dual-city identification, because of impact on the development of UHF (particularly on Station WTSJ, San Juan). See *Ponce Television Corporation*, 17 FCC 2d 411 and, on reconsideration, 18 FCC 2d 543 (both 1969). In the latter decisions, the Commission set forth certain conditions on WRIK's use of its "auxiliary" San Juan studio: more than 50%

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[4] One aspect of this matter which should be noted is that there are no mileage separation problems. There are no co-channel assignments in Puerto Rico on this or any channel; the only adjacent-channel assignment in the area is Channel 8 at Christiansted, V.I., more than 85 miles from the location proposed in WRIK's last application and farther from either San Juan or Ponce.

of the station's programs other than network and other than entertainment (including sports) must originate from Ponce, and if the San Juan studio has facilities for color telecasting the Ponce studio must have them also.

7. In March 1971 WRIK applied for permission to move transmitter site to a location close to those of the two San Juan stations, some 37 miles east and slightly north of Ponce and about 24 miles south of San Juan.[5] This was opposed by three stations, as mentioned above, particularly WAPA-TV and WTSJ, San Juan, and was designated for hearing in March 1972, on issues mentioned above, and also an issue as to whether, in fact, WRIK had moved its main studio to San Juan without Commission authority (the opponents claimed that WRIK-TV had not complied with the two requirements mentioned above). Shortly thereafter WRIK withdrew its application rather than go through a long and burdensome hearing proceeding (described in the instant petition as "an adventure in self-immolation"), and later paid a $10,000 fine in connection wth the studio question, whereupon the hearing was terminated. In September 1973 it filed the instant petition requesting a declaration of policy. Other details of WRIK's operation, including its claimed losses, are set forth below.

MATERIAL IN THE PETITION AND RESPONSIVE PLEADINGS

8. Essentially, WRIK's petition sets forth the position that the whole island of Puerto Rico is one market for TV advertising purposes, with the greater San Juan area as the crucial core of that market; that the basis of Puerto Rican television is the island-wide systems (now four) each with a "flagship" station serving San Juan and having island-wide coverage through translators or re-broadcast arrangements with regular stations (no station has ever operated successfully without being part of such a system); that the WRIK system ("Rickavision") is at a serious disadvantage by virtue of its inferior coverage of San Juan compared to the other three "flagship stations", to the extent that it is cut off "from at least half the market opportunities in the island", which precludes its long-term viability; and that as a result it has had staggering losses, totalling nearly $8.5 million in the three years 1970–72, requiring cash advances from the parent United Artists of about that amount in three years and a total of more than $10,000,000 by the end of 1973 (all despite higher than average program expenses ranging from $2,650,000 to $2,856,000 per year, including its payment to WORA-TV for rebroadcast of $720,000 or more each year, which in two of the three years were more than its total revenues). It is stated that the station's survival is jeopardized, and it cannot continue these losses much longer; the survival of outside stations as well would thus be jeopardized.

9. Recognizing that it had an opportunity in 1972 to make its case in a hearing, WRIK asserts that it withdrew because of the delay and burden involved—"defeat by attrition". It asks now that the Commission dispose of the objections of its opponents by "advance recognition

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[5] The site of the Caguas-San Juan station is north of these locations, closer to Caguas and San Juan.

by the Commission of the unique nature of the television industry in Puerto Rico and the necessity of equal access to San Juan by the flagship station of each system." This would remove the contentions of the opponents as "substantial and material questions of fact" and thus make an evidentiary hearing on another application unnecessary, depriving the opponents of the procedural tool which otherwise they will be able to use indefinitely to perpetuate their competitive advantage and the anti-competitive situation. Accordingly, we are asked to make a formal statement to the effect that the various matters urged cannot equal in importance the "equality of access for flagship stations" concept—[6] which, it is claimed, the Commission has recognized many times in connection with mainland U.S. broadcast matters. Examples are cited of past Commission general statements concerning matters involved in applications and hearings—"307(b)", comparative broadcast hearings, TV multiple ownership, etc.

10. WRIK submits considerable factual data in support of various parts of its argument. One subject is the importance of San Juan and its area in the life of Puerto Rico, including only about 27% of the population but 70% of the wholesale and 50% of the retail trade, and 72% of service activities, and having with 45 of 52 of the island's advertising agencies which place 99% of the total advertising placed by Puerto Rican agencies.[7] It is also described as the center of government and of the island's cultural activity. A second area as to which data was advanced concerns WRIK-TV's share of audience in the San Juan area, in the South-West region which includes Ponce, Mayaguez and Aguadilla, and in the island overall. Based on a May 1973 survey, WRIK-TV is fourth in 61 of 63 weekly evening half-hours (third in two), whereas in the South-West Region it was first or second in 62 of 63 (third once).[8]

11. *Arguments of the opponents.* The WRIK petition was opposed by the licensees of the two San Juan stations, WAPA-TV and WKAQ-TV, and by Suburban Broadcasting Corporation, the new UHF applicant there. The first two oppositions were in the form of motions to dismiss. All of these parties urge largely procedural concepts—that the petition's request is without precedent, a "circumvention of established procedures" (either the hearing opportunity which WRIK decided not to accept, or formal rulemaking to reallocate the channel), a petition for reconsideration of matters already decided when the Commission designated the earlier WRIK application for hearing, or a request for an "advance waiver" of important matters which would be involved in any future hearing. It is claimed that WRIK has not sustained the burden of establishing why such an unprecedented approach should be taken, and, indeed, that it is not per-

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[6] WRIK claims that the four lines of objection are not of great importance; the shadowing and "loss of service" problems (if any) can be cured by translators, the impact on a potential UHF station in San Juan cannot be held to equal the importance of maintaining existing services, and, as long as WRIK maintains its present extent of local service to Ponce, it is idle to ask whether the move might be considered by some a "de facto" reallocation of the channel to San Juan.

[7] Pertinent 1970 Census population figures are as follows: Puerto Rico, 2,712,033; San Juan city, 452,759, urbanized area 820,442, SMSA 851,247; Ponce city, 128,233, SMSA 158,981. Caguas, fairly close to San Juan, had a city population of 63,215 and an SMSA population of 95,661.

[8] For the island as a whole, WRIK-TV was first in 3 half-hours, second in 4, third in 25 and fourth in 31.

missible under the Communications Act and the Administrative Procedure Act. It is urged that none of the past examples of Commission general policy statements cited is precedent here (for example, it is claimed that the Comparative Hearing policy statement was basically a statement of existing policy, not the formulation of a new policy); and that this kind of approach would spawn a host of similar requests by potential applicants, to have troublesome issues settled in advance.

12. WKAQ-TV also goes into the particular facts of the situation, urging: (1) WRIK obviously was not so concerned about time pressure when it dismissed its application in 1972, since it could well have had a hearing decision by now if it had continued; (2) the economic situation is simply not all that urgent, in view of the profitability of United Artists and Transamerica Corp. (the ultimate parent of WRIK); lower deficits in 1972 than in earlier years; the facts that Ponce, the WRIK-TV city of license, showed radio revenues of over $1,000,000 in 1970 and should be able to support two TV stations, and that there is a UHF permitted in the smaller city of Aguadilla; and (3) the fact that the Commission is not a guarantor of profit.

13. The new San Juan UHF applicant makes some of these arguments and also urges the importance of *localism* in the Commission's allocation of television channels, and the fact that the addition of a fourth San Juan VHF competitor would assertedly mean the end of the proposed UHF operation (splitting the advertising revenue available among four, rather than three, powerful VHF competitors). It asserts that what is involved here is really a reallocation of Channel 7 to San Juan, in which case the station authorized on the channel now does not have rights greater than any other applicant; and it requests equal opportunity to apply for the channel if it is reassigned to San Juan.

14. There were later pleadings by WRIK and WKAQ, but, since we are herein taking no final action, it is not necessary to discuss them.

15. *Letters from the representative of the Governor of Puerto Rico.* On September 27, 1973, a letter was addressed to the Commission by Mr. Jose A. Cabranes, of Washington, D.C., Administrator and Special Counsel to the Governor of Puerto Rico. It is asserted that the circumstances of Puerto Rico, including television, are unique and different as compared to those of the mainland U.S. (as to language, economic conditions, etc.), so that the same policies should not necessarily apply (citing our recent rule-making proposal concerning dual-language TV/FM programming). It is stated that for practical purposes the island is one television market, served by four systems or "networks" (as described above); and it is urged that the Commission recognize the problems and "take such action, as promptly as possible, as well as assure diverse sources of programming for Puerto Rico while avoiding undue or unusual concentration of control of the broadcast media."

16. On October 10, 1973, Mr. Cabranes directed another letter, stating that the Commonwealth Government neither supports nor opposes the WRIK petition, but that the earlier letter was simply designed to provide the Commission with information as to Puerto Rico and its acknowledged "uniqueness".

DISCUSSION

17. *Preliminary observations.* At the outset of our discussion of the foregoing matters, it is appropriate to make one general observation. At this point, it appears to us far from clear that the public interest would be furthered by permitting WRIK–TV to make the transmitter move proposed in its earlier application, or that, even if the move should be found ultimately to be in the public interest, it is appropriate or feasible to issue the kind of advance "policy statement" which WRIK seeks. The hearing process, whatever its drawbacks, is the procedure designed to develop most completely the facts of a given situation; and the Commission has often been reversed by the Court of Appeals for not adopting it in various situations. WRIK rejected its earlier opportunity to present its case in this fashion; and it may well be that the most appropriate course is simply to afford it the same opportunity if and when it tenders a similar application. The four hearing issues concerning the earlier application which were mentioned above—"UHF impact", the matter of de facto reallocation of the channel, "shadowing" over the principal community and net losses in service—are important considerations, and also subjects where at least a fairly close look at the particular facts involved appears likely to be necessary before a decision can be reached. Unless we conclude that the "equal facilities for flagship stations" concept urged, together with WRIK–TV's economic situation, is so compelling as to dwarf these other matters, it is rather hard to see how a hearing could be avoided, as long as Channel 7 remains assigned to Ponce.

18. Because of these reservations and problems concerning a possible "statement of policy", we are including herein, although not requested by petitioner, the matter of simply reassigning the channel so as to make it available for use by a station licensed to San Juan, by re-designating it as a hyphenated "Ponce-San Juan" assignment. This is the traditional and most direct approach to such matters and it eliminates the question of "de facto reallocation", although it probably also means that the channel would be open to other applicants, such as the new UHF applicant. The matter of reassignment is discussed more fully below, and one of the questions on which comments are invited is whether—legally or as a matter of basic fairness—such reassignment does in fact open the channel to any applicant who wishes to seek it.

19. However, despite the foregoing doubts and problems, we believe the possibility of issuing a statement in this situation, with a view to settling at an early date as many matters as can be so resolved, should be explored, and that is one of the chief purposes of this proceeding. This threshold question is one of the matters set forth below on which comment is invited. As WRIK points out, the Commission has in the past issued policy statements designed to create certainty and simplify or eliminate matters as hearing issues.[9] While use of that ap-

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[9] See *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393 (1965); *Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190 (1965); *Interim Policy Concerning Acquisition of Television Broadcast Stations*, FCC 65–548, 30 F.R. 8173, 5 R.R. 2d 271 (1965).

proach here would be somewhat novel, for one reason because at most only a very few situations would be involved if the matter is limited to Puerto Rico, this does not by itself render such a procedure either inappropriate or unfeasible. The hearing process is undoubtedly a time-consuming and burdensome one, for the Commission and staff as well as for the parties. Consistent with the Commission's authority, and indeed its obligation, to adopt procedures which conduce to the most prompt and efficient handling of its business, we believe consideration should be given to the possible issuance of a statement which would settle some, or conceivably all, of the matters which might otherwise require a hearing if and when WRIK tenders an application similar to that of 1971. This is the only conclusion which has been reached at this point. There is another advantage also: instituting a proceeding in the form of this one may provide useful comments on questions which come up from time to time. One of these is the question of whether, under circumstances such as those here assuming a transmitter move like that previously applied for, there would have been a "de facto" reallocation of the channel to make it a San Juan assignment. Another is whether a channel reassignment—either a "de facto" one or a formal rule-making action—automatically opens the channel up to other applicants. These matters are discussed below.

20. *Re-designation of Channel 7 as a "Ponce-San Juan" assignment.* This is the only rule-making proposal included herein.[10] We have substantial reservations about whether it would be an appropriate move; as mentioned, it is advanced as probably the most direct approach to the problems raised by petitioner, assuming *arguendo* that any relief can and should be given. Use of the channel at San Juan might be justifiable, from a "307(b)" standpoint, in light of the comparative populations of the two cities (footnote 7 above), since this would mean three unreserved VHF channels at San Juan (or four if the Caguas assignment is counted) compared to one for Ponce. While there are arguments the other way, such as encouragement of a "choice of local service" at Ponce (particularly since the other existing station operates entirely or very largely as a satellite), we believe the formal reassignment warrants consideration. Many of the subjects set forth below on which comment is invited are relevant in this connection also, and will be considered in both connections without having to be set forth separately. One of these subjects is the question of whether, if the channel is so reassigned and WRIK-TV seeks modification of license to become a San Juan station, the channel thus becomes available to other Ponce and San Juan applicants.

21. *The economic situation and prospects of WRIK-TV.* While we do not here attempt to spell out the showings which will be required in this matter, it appears likely that the economic situation and pros-

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[10] We do not believe it appropriate to consider the addition of a footnote to § 73.606, as suggested by petitioner in a letter and mentioned in par. 4 above. There appears no reason to clutter the Table of Assignments with a statement which is both somewhat indefinite and applicable only in a very few situations. As to reassigning the channel to San Juan alone, while comments making this suggestion will be entertained, we do not believe it appropriate as a Commission proposal, since it would, at least for now, foreclose the second largest city in Puerto Rico (Ponce) from having a local station other than a satellite. While "hyphenation" is not a favored concept, it appears the most suitable approach here if any change is to be made.

pects of WRIK–TV may well be an important part of the case, both as to the need for and propriety of the "advance ruling" requested and as to the ultimate merits of its transmitter-move proposal. The Commission will consider the data contained in stations' annual financial reports, and we will assume that WRIK agrees that such data for WRIK–TV may be made public to the extent necessary to support the decision reached. The same assumption will be made as to other Puerto Rican licensees who participate in the proceeding.

22. "*Inequality in access to San Juan*". One of the important aspects of WRIK's case is that WRIK–TV does not put a signal over the major city of San Juan comparable to those of the other three stations, despite the fact that all put a *predicted* principal-city signal over this area, and that therefore it is at a serious competitive disadvantage. The data in support of this consists of an audience-preference survey, showing respective shares of audience in greater San Juan and elsewhere. While this might be indicative of comparative signal quality, it might also reflect to a substantial extent the programming of the stations, since audience tastes vary among viewers, including variations among different areas, e.g., large-city vis-a-vis more rural areas. Therefore it would be desirable for a showing on this subject to include more than audience data, so as to indicate more precisely whatever technical difference in signals may exist.

23. "*Comparative equality for flagship stations*" *and* "*UHF impact*". The first of these concepts is the key to WRIK's argument—that here there should be equal facilities and access to the heart of the market for the four Puerto Rican "originating stations", and that the Commission should hold this to be an overriding consideration outweighing the various other aspects of the matter, including impact on UHF development. It is true, as WRIK points out, that past Commission actions have emphasized the concept of "equality" and "equal access" among networks and their outlets.[11] However, particularly in more recent years, there have been substantial limits on the application of such concepts, chiefly resulting from the matter of "UHF impact", which has been of particular concern to the Commission in light of our commitment to make vigorous efforts to further UHF development generally, a commitment made in connection with enactment of the "all channel receiver law" in 1962 (see § 303(s) and 330 of the Communications Act). Thus, in the VHF drop-in matter cited by the petitioner and above, we refused to make 7 additional VHF short-spaced drop ins. More recently, we acted to terminate ABC's authority to continue serving the San Diego market through a Tijuana, Mexico VHF station, in order to further the development of UHF in San Diego. See *American Broadcasting Companies, Inc.*,

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[11] WRIK cites the *VHF drop-in* decisions, 25 R.R. 1687, 1696 (1963), particularly Chairman Minow's concurring statement ; the *ABC–ITT Merger* decision, 9 FCC 2d 546, 571 (1967) : and in radio, various Court and Commission actions in the "KOB–WABC" case (1960 and 1965 Court decision, 280 F. 2d 631, 635, and 345 F. 2d 954, and the Commission's later 1969 rule-making action, Clear Channel Broadcasting, 17 FCC 2d 257, 270). Other actions could be cited, such as the third-VHF-channel "drop ins" made in 1961 in Grand Rapids, Mich. and Rochester and Syracuse, N.Y., as well as the "move-in" of the New Bedford, Mass. station to a location where it could better serve the Providence, R.I. market (see 17 R.R. 1737, 1748a and 1754, and 23 R.R. 1050, respectively).

35 FCC 2d 1 (1972). There are numerous other examples. The all-channel law and our implementing rules apply as much to Puerto Rico as they do to the mainland U.S., and therefore the same general considerations would appear to apply also.

24. Since there have been San Juan UHF operations in the past and there is now a pending application, the "UHF impact" concept may be the most difficult hurdle facing WRIK in this matter, now or later. However, it may be that there are possible counter-arguments worthy of attention, for example the absence here of any mileage separation deviation, the fact that no impact on any existing UHF station is involved now (unlike the situation earlier),[12] and the importance (if in fact it exists) of a transmitter move to insure the survival of a station providing some locally originated service to Ponce. These matters appear to warrant exploration, together with the "equality" concept which WRIK urges so strongly.[13]

25. *"Shadowing" and "loss of service" resulting from the move.* These matters, included as two of the four basic hearing issues on which the earlier application was designated, are not subjects which can profitably be discussed at length in the absence of specific facts. They may be of high importance (for example, as to losses in service, see *Hall* v. *FCC*, 237 F 2d 567 (1956), and *Television Corporation of Michigan* v. *FCC*, 294 F 2d 730 (1961)), or they may be of considerably lesser weight, depending on the facts presented in a given situation.[14] As discussed below, the problem of "shadowing" into Ponce, to the extent it may exist, may be relevant in connection with the question of whether the transmitter move contemplated would amount to a *de facto* reassignment of the channel. One point should be noted: WRIK asserts that whatever drawbacks in these respects its proposal may have, they are curable by translator operation; it should be specific as to its intentions in these respects if it wishes to get any kind of an advance determination on these points (which may well not be possible anyhow).

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[12] Some of the Commission rule-making decisions involving formal reassignment of channels have turned on "UHF impact" in terms of potential development only. However, most, if not all, of the cases involving transmitter moves rather than new assignments have involved injury to an authorized UHF station.

[13] To the extent this concept may be determinative here, the question of course is what weight should be attached to the concept of equality among the four Puerto Rican television "systems". There are both similarities and differences between this question and the concept of equality among the three mainland networks, which may work both ways—for example, the question of whether these really are "networks", since they involve only two regular stations at most, and one of these serves the bulk of the population covered; and, on the other hand, the fact that there is involved here the matter of equality of access by the "flagship station", which has not arisen in the case of U.S. networks because all three have comparable access with respect to what could be considered their "flagship" stations (New York, Los Angeles and Chicago). "Network equality" in the U.S. television situations has involved access to smaller markets, such as those mentioned above.

[14] In terms of predicted Grade A coverage as shown in the contour maps attached to the petition, the losses might not be crucial. WSUR, the Ponce satellite, provides all of the island with a predicted Grade A signal, the two San Juan stations so cover roughly 75% of it, and Stations WOLE-TV, Aguadilla, and WORA-TV, Mayaguez, both cover much of the Western area not reached by the San Juan stations. It appears that the move might result in reduction of a very small area in the central West to one Grade A signal, and more substantial areas in the Northwest and central West to two Grade A signals (WSUR and either WORA-TV or WOLE-TV). However, in view of the rugged terrain involved, depiction of predicted contours is not necessarily the complete answer.

26. *"De facto" reallocation and whether reallocation opens the channel to all applicants.* Comment is invited on two questions which involve legal as well as policy considerations: (1) whether under all of the circumstances here, permitting a transmitter move such as that in WRIK-TV's earlier application is in effect a *de facto* reallocation or reassignment of the channel to San Juan, in any meaningful sense; and (2) assuming either a *de facto* or a formal reassignment, whether this means that the channel should be open to all applicants, assuming, in the case of a formal reassignment, that the station takes steps, such as moving its site or seeking a change in its city of license, to become a station tied to the larger city. In connection with the first question, it is certainly arguable that the combination of facts would make the station really a San Juan station, taking into account its location closer to San Juan than to Ponce (and providing a better signal to the former than to the latter), the maintenance of elaborate studios in San Juan, the origination of the bulk of its programming there (both entertainment and part of non-entertainment material), and the established fact that stations generally tend to be oriented toward the larger city, where the bulk of their potential audience and potential advertising revenues are located. On the other hand, it may be that this is too rigid a view of the matter to be realistic. TV stations and channels assigned in the general area of large cities, but not to them, have shown a very strong tendency to gravitate toward the larger center; and it may be that all that should be expected of an assignment like Ponce Channel 7 is that the station will be licensed to the smaller city, will maintain an adequate studio in and originate at least a fairly substantial amount of regular programming from it (geared to its needs and interests), and will put a predicted principal-city signal over it even though there are some shadowing problems (with the latter problems to be mitigated by translators). We reach no conclusions; comments on these matters are invited.

27. As to the second question—the consequences of reassignment of the channel, in terms of opening it up to other applicants—the prevailing view at least for several years has been that a formal reassignment does have this effect. At least two U.S. Court of Appeals (D.C.) decisions have so indicated though neither involved a square holding. See *Community Telecasting Co.* v. *FCC*, 225 F. 2d 891 (1958) and *Louisiana Television Corp.* v. *FCC*, 347 F. 2d 808 (1965), in which the Court appeared to extend this principle to *de facto*, as well as formal, reallocations. Nevertheless, neither of these was a square holding on the point, and in one early case the Commission did not follow this concept (*Muskogee-Tulsa, Oklahoma*, 15 R.R. 1720 (1957)). Therefore, comments upon this matter are invited, in light of both legal requirements and general public-interest policy and fairness considerations. However, we know of no reason at this time why the viewpoint set forth in the two court cases cited does not apply, at least to a formal reallocation.

SUBJECTS ON WHICH COMMENTS ARE INVITED

28. In light of the matters discussed above, comments are invited on the following matters.

(a) Whether Channel 7, now assigned in § 73.606(a) of the Rules to Ponce, P.R., should be re-designated a "Ponce-San Juan" assignment by amending the Table of Television Assignments in § 73.606(a) accordingly. This is the only rule-making proposal in this proceeding. Such action will be considered in light of the matters referred to above, comments filed in response to specific questions in this paragraph, below, and other matters pertinent to Commission decisions in television channel assignment proceedings.

(b) Whether a statement of policy can or should be issued concerning equality of access to the San Juan market (facilities and transmitter location) by Puerto Rican stations, particularly those which originate substantial amounts of programming, and concerning applications to move transmitter site to improve such access, like that by Ponce Television Corporation in 1971 (BPCT-4421) involving a proposal to move to a location closer to San Juan than to Ponce.[9] This statement, if issued, would be an attempt to indicate what weight will be attached to various considerations discussed above and in this paragraph below, if an application containing such a transmitter-move proposal is filed. The Appendix, WRIK-TV's proposed policy statement, is set forth to show the kind of material such a statement might contain, although it is not proposed for adoption as such:

(c) In connection with either a formal reassignment of the channel, or a possible "statement of policy", what significance should be attached to the following matters, in light of past Commission decisions, general Commission policies, and the facts of this case including the economic situation and prospects of WRIK-TV:

> (1) Provision of generally equal facilities, in terms of quality of signal to the San Juan area, for the originating stations of the four existing Puerto Rican television broadcast "systems", and for any other VHF or UHF stations which originate substantial amounts of programming.
>
> (2) The effect of the kind of site change proposed by WRIK-TV on the development of UHF in Puerto Rico, including the station recently applied for in San Juan, other authorized stations in Puerto Rico, and future UHF development in Puerto Rico generally.
>
> (3) The extent to which such a transmitter move may be necessary to insure the survival of WRIK-TV and of the station (WORA-TV, Mayaguez) which re-broadcasts much of its programming.
>
> (4) Whatever gains or losses in television service to areas and populations would result from such a transmitter move.
>
> (5) "Shadowing" which may exist over Ponce from the proposed location, in relation to the requirements of § 73.658(a) and (b).

(d) Whether a transmitter move such as that proposed should be regarded in any significant sense as a "de facto reallocation" of the channel involved, bearing in mind the transmitter location closer to the larger city and likely provision of a better signal to it than to Ponce, the maintenance of studios in San Juan at least as well-equipped and elaborate as those in Ponce, and the origination of the bulk of the programming from San Juan but more than half of the nonentertainment programming from Ponce.

(e) Whether a reassignment of the channel, either the formal reassignment as proposed in (a) above (together with steps by the licensee to move toward San Juan), or a "de facto reallocation" to the extent it may be involved, serves to open the channel to application for its use by other parties either in Ponce or in San Juan.

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[9] Parties may wish to comment on the situation of Station WSTE-TV, Fajardo, P.R. (authorized but never operating) in this respect.

29. Authority for the institution of this proceeding is found in §§ 4(i) and (j), 303(d), (f), (g), (h), (i) and (r), 307(b), and 403 of the Communications Act of 1934, as amended.

30. Pursuant to applicable procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments on or before April 22, 1974 and reply comments on or before May 3, 1974. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

31. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. These documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX

Text of policy declaration requested by Ponce Television Corporation.[1]

(a) Puerto Rico has been compelled by circumstances, linguistic and economic in nature, to develop for itself a microcosm of mainland networks.

(b) Four broadcasting systems operating in Puerto Rico compete with each other on an island-wide basis in the same manner as the three television networks on the mainland compete on a nationwide basis.

(c) The Commission will give high priority to the maintenance and encouragement of island-wide competition. The competitive disadvantage of one island-wide network or system has adverse island-wide effects on the public interest. Without such island-wide systems, with equivalent access to San Juan, the viability of non-San Juan outlets for local expression will be critically impaired if not destroyed.

(d) Equal facilities for the flagship stations of island-wide systems or networks is a matter of high importance not to be cast aside without very strong countervailing reasons.

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[1] The text of the requested statement is set forth for information only.

FCC 74-282

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WFTL BROADCASTING CO., LICENSEE OF RADIO STATION WGLO(FM), FORT LAUDERDALE, FLA. For a Subsidiary Communications Authorization (SCA) To Conduct a Visual Subscription Service	File No. BSCA-1274

MEMORANDUM OPINION AND ORDER

(Adopted March 14, 1974; Released March 19, 1974)

BY THE COMMISSION: CHAIRMAN WILEY CONCURRING IN THE RESULT.

1. We have before us (a) the above-captioned application, granted November 21, 1973; (b) a petition filed December 21, 1973, by Micro TV, Inc. (Micro TV), seeking reconsideration of that action; (c) opposition pleadings filed February 19, 1974, by WFTL Broadcasting Company (WFTL) and by the system proponent, Information Transmission Corporation (ITX); (d) a reply brief filed March 1, 1974, on behalf of Micro TV; and (e) all related pleadings and correspondence. Micro TV, permittee of common carrier Multipoint Distribution Service (MDS) station WPE-97 in Philadelphia, Pennsylvania, claims that WFTL should have proceeded by way of petition for rule making or request for rule waiver because its "visual subscription service" is inconsistent with the restrictions on SCA uses contained in section 73.293(a) of our rules, and amounts to a closed circuit multipoint visual system in direct competition with MDS.

2. The multiplex system developed by ITX, and being installed at WFTL's FM broadcast station in Fort Lauderdale (WGLO), consists of a central computer and user terminals to be located in homes, hotels, and offices. The terminals are called TV Reporters. The computer accepts input from various program sources and encodes it for transmission on WGLO's authorized SCA sub-channel (67 kHz). The nonaural information so transmitted is stored in the TV Reporter's memory bank. On pushbutton command of the subscriber, the stored information is converted to a television signal which, in turn, is delivered by cable to the user's nearby television receiver tuned to an unused channel. Retransmission occurs at 30 frames per second (60 scans interlaced), and the desired information remains displayed on the television screen until updated. The signal transmitted on the SCA sub-carrier is a fixed amplitude wave-form containing synchronization components, and is designed to insure that the permissible 8 kHz band-

width is not exceeded. About $200,000 has already been spent by ITX on system development and marketing research.

The computer will be programmed by ITX, with the licensee retaining ultimate responsibility over all material transmitted on the subcarrier, as required by section 73.295(c) of the rules.

3. The ITX system is but one of a growing number of non-aural transmission techniques designed to operate within the SCA engineering standards (section 73.319). An SCA applicant must, in addition to meeting these technical standards, either offer a broadcast-related subscription service to the public (i.e., background music, storecasting, or other types of specialized programs) or justify the requested subchannel in terms of the internal operating needs of the station (remote cueing, transmitter telemetry, and so on). While the SCA rules (section 73.293, et seq.) are silent as to whether the proposed service must be an *aural* service, this was the tacit assumption which underlay the 1960 SCA rule making. *Report and Order* in Docket 12517, 19 RR 1619. By 1965, however, developmental work had started on other transmission systems designed to operate on SCA sub-carrier frequencies, the end-product of which was frequently *not* an aural service. For example, on March 22, 1967, we directed a letter to radio station KQUE (FM), Houston, Texas, authorizing development work to proceed on SIGHT RADIO, a display board activated by inaudible tones superimposed on a 67 kHz sub-carrier. And by letter of February 3, 1971, to radio station WHBI(FM) in New York City, we authorized on-air experiments with 41 kHz radio teleprinter operation for the delivery of stock market information to brokers and other subscribers. Similar authorizations have been issued to radio stations WRVR (FM), New York, and KFAB–FM, Omaha. In all cases, the end-product was a hard copy or other form of visual display as opposed to a conventional aural service. For this reason, they were granted as part 73 developmental or experimental operations rather than as SCA's. A review conducted last year of the test-result reports submitted in connection with these and similar authorizations, however, indicated that they no longer add much, if anything, to our general fund of knowledge concerning what is and is not technically feasible in the area of FM multiplex transmission.

4. We are therefore of the opinion that in the present state of the art, a developmental or experimental test program is no longer necessary to determine the technical feasibility of proposals of this type, and that they should be routinely granted, as SCA's *if* they meet the eligibility and use restrictions and the technical requirements applying to SCA operation. Our grant of the above-captioned application simply reflects this judgment. The operation can be conducted largely with "shelf" items and still remain within the engineering tolerances specified for SCA operation. With respect to what is permissible in the way of SCA subscription services, the basic test has been, and continues to be, that the proposed use must be ". . . of a broadcast nature [but] of interest primarily to limited segments of the public wishing to subscribe thereto." Section 73.293(a)(1) of the rules. Thus, while possessing some of the attributes of "broadcasting" as defined in sec-

tion 3(o) of the Communications Act, transmissions carried by FM broadcasters on their authorized sub-carriers are, in common with the point-to-point services, protected from unauthorized interception and use under section 605 of the Act. *Functional Music Inc.* v. *FCC*, 274 F. 2d 543 (1958); *KMLA Broadcasting Corporation* v. *20th Century Cigarette Vendors et al.*, 264 F. Supp. 35 (1967). Admittedly, to depart from the concept that SCA transmissions must be broadcast-related would open the door to a variety of point-to-point uses such as radio paging, traffic light control, and business data transmission. We have already said that this would work a de facto reallocation of the FM broadcast band which could properly be accomplished only in a public rule-making proceeding. *Report and Order*, *supra*. On the other hand, there appears to be no valid reason why SCA proposals which *are* broadcast-related should be processed differently simply because the end-product is visual rather than aural. For example, the market quotations, airline schedules, local news, and weather information which WFTL will offer to subscribers in visual form is the very type of specialized, broadcast-related programming contemplated in section 73.293(a)(1) of the rules.[1] For these reasons, we now believe that such proposals should be processed as conventional SCA's with conditions appropriate to each case, when no true experimental or developmental considerations are involved. To this extent, Micro TV is correct in asserting that the grant of the above-captioned application marked a change in Commission policy. But the claim that the change was arrived at arbitrarily must be rejected.

5. Since the SCA rules can be read to encompass both aural *and* visual transmission systems, and since the end-product of the ITX system is clearly broadcast-related, we conclude that the above-captioned application was properly granted under existing rules. It follows that Micro TV's contention that WFTL should have proceeded by way of petition for rule making or request for waiver must be rejected. In reaching this conclusion, we wish to emphasize that the processing of digital and other non-aural SCA proposals on the same footing as conventional (aural) SCA proposals will not open the door to the routine handling of requests for facsimile and slow-scan television operation on SCA sub-carriers. In both cases, it may first be necessary that industry-wide transmission standards be adopted. These matters are already receiving rule-making attention.

6. Finally, we note that Micro TV is not a permittee or applicant for MDS facilities anywhere in the State of Florida. Since any economic injury to Micro TV flowing from our grant of the above-captioned application is speculative at best, it is doubtful that Micro TV has standing to prosecute its objections in the circumstances presented.

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[1] It is important to note that neither WFTL nor the SCA program supplier (ITX) has the intention nor the authority to operate as a common carrier. WFTL must, as an FM broadcast licensee, assume full responsibility for sub-carrier program content—irrespective of whether the programming is originated by it or by a program supplier such as ITX. By way of contrast, an MDS carrier like Micro-TV furnishes through its facilities a "pipeline" for the transmission of subscriber-provided information between two or more points specified by the subscriber. See *Report and Order* in Docket 19493, 39 Fed. Reg. 2760 (January 27, 1974). In so doing, it assumes no affirmative obligation with respect to programming.

We have, however, treated those objections on the merits because we recognize that MDS is still in its infancy and, in limited situations, may someday be competitive with SCA subscription services of the type here authorized. Assuming this to be the case, it does not follow, as suggested by Micro TV, that our rules must be structured and interpreted in such a way that a given communications requirement can be met only in one service. On the contrary, we have sought to maximize the options available to the public by establishing numerous (and sometimes overlapping) radio services and systems tailored to meet a variety of requirements. We see nothing unsound in providing for a new tariff service which, in some circumstances, may be competitive with an established SCA subscription service.

7. In light of the foregoing considerations, IT IS ORDERED, That Micro TV's petition for reconsideration IS DENIED, and our earlier grant of the above-captioned application IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74R-101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of KENNETH N. DAWSON AND RANDALL M. MAYER D.B.A. WINDHAM BROADCASTING GROUP, WILLIMANTIC, CONN.	Docket No. 19870 File No. BPH-8177
THE NUTMEG BROADCASTING CO., WILLIMANTIC, CONN. For Construction Permits	Docket No. 19871 File No. BPH-8113

MEMORANDUM OPINION AND ORDER

(Adopted March 18, 1974; Released March 20, 1974)

BY THE REVIEW BOARD:

1. This proceeding involves the mutually exclusive applications of Windham Broadcasting Group (Windham) and The Nutmeg Broadcasting Company (Nutmeg) for a permit to construct and operate a new FM broadcast station on Channel 252A in Willimantic, Connecticut. Nutmeg is presently the licensee of Connecticut standard broadcast Stations WILI, Willimantic; WNTY, Southington; and WINY, Putnam. By Order, 38 FR 34362, published December 13, 1973, the Chief of the Broadcast Bureau, acting pursuant to delegated authority from the Commission, designated the applications for consolidated hearing. Presently before the Review Board is a motion to enlarge issues, filed December 28, 1973, by Windham, seeking addition of Rule 1.65 and 1.615 issues against Nutmeg.[1]

2. Windham alleges that Rule 1.65 and 1.615 issues are required because Nutmeg filed inconsistent, tardy, and erroneous information with the Commission in its application and Ownership Reports. In support of the requested 1.65 issue,[2] Windham avers that Nutmeg's Ownership Report, dated February 7, 1973, and filed February 13, 1973, discloses certain stock transfers that were never reported in Nutmeg's original application or subsequent amendments thereto. Specifically, petitioner alleges that Herbert C. Rice transferred gifts of Class B common stock to various persons on December 31, 1971, February 2, 1972, and February 1, 1973,[3] and that none of these gifts are reflected

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[1] Also before the Review Board are the following related pleadings: (a) Broadcast Bureau's comments, filed January 9, 1974; (b) reply [opposition], filed January 11, 1974, by Nutmeg; (c) comments on Broadcast Bureau's comments, filed January 17, 1974, by Nutmeg; and (d) reply, filed January 21, 1974, by Windham.

[2] Rule 1.65 requires disclosure when the information furnished in an application is no longer substantially accurate and complete in all significant respects or when changes which may be of decisional significance have occurred.

[3] Herbert C. Rice is Chairman of the Board and principal stockholder of The Nutmeg Broadcasting Company. Nutmeg's "reply" indicates that his children were the recipients of the Class B common stock gifts.

in the ownership information submitted by Nutmeg in its application filed October 17, 1972, or amendments thereto, filed November 22, 1972, and January 29, 1973. Windham further alleges that Nutmeg's explanation, set forth in its November 22, 1972, amendment, that Edward G. Gerbic *then* owned no stock in Nutmeg, is apparently erroneous since Nutmeg's ensuing amendment, filed January 29, 1973, discloses that Gerbic did not sell his interest in Nutmeg until December 20, 1972. Finally, Windham contends that paragraph 11, Section II, page 2 of the November 22, 1972, amendment fails to reflect the retirement of Gerbic's stock. The request for the 1.615 issue[4] is predicated upon Nutmeg's alleged failure to comply with that provision relative to the December 31, 1971, and February 2, 1972, stock transfers. In this regard, Windham maintains that Nutmeg's Ownership Reports were untimely filed since the above sets of gifts of Class B common stock were not reported until the February 13, 1973, Ownership Report.

3. The Broadcast Bureau supports Windham's motion. In addition, the Bureau contends that Nutmeg's failure to properly report the stock ownership in its original application is an apparent violation of Commission Rule 1.514.[5] The Bureau supports a full inquiry into the Gerbic stock discrepancy unless a satisfactory explanation is offered by Nutmeg. Finally, based upon information contained in Nutmeg's "reply" to Windham's motion to enlarge issues,[6] the Bureau suggests that a possible further violation of Rule 1.615 may exist since, as of January 9, 1973, Nutmeg had not filed the required Form 323 reflecting a transfer of 100 shares of Class A stock on December 10, 1973, from Herbert C. Rice to Ethel A. Rice.

4. In response, Nutmeg concedes that its Ownership Reports were tardy, relative to the Class B common stock transfers, and that such information was not properly reflected in its original application. Respondent explains, however, that the gifts were part of an estate plan prepared by local attorneys and that the information was inadvertently not transmitted to its Washington counsel.[7] Although the error was discovered in February 1973, respondent continues, and the Ownership Reports updated, Nutmeg alleges that it "forgot" to amend its application to properly reflect this information. Nutmeg declares

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[4] Rule 1.615 provides in pertinent part, that: "(c) a supplemental Ownership Report (FCC Form 323) shall be filed by each licensee or permittee within 30 days after any change occurs in the information required by the Ownership Report from that previously reported. Such report shall include without limitation. . . . (3) Any transaction affecting the ownership, direct or indirect, or voting rights of licensee's or permittee's stock such as: (i) a transfer of stock. . . ."

[5] Rule 1.514 provides that: "(a) Each application shall include all information called for by the particular form on which the application is required to be filed. . . ."

[6] On January 7, 1974, the Bureau received a copy of Nutmeg's opposition pleading, which is erroneously captioned a "reply". The Commission's copy was received on January 11, 1974.

[7] Nutmeg's opposition indicates that its Connecticut standard broadcast stations are represented by Washington communications counsel. In this proceeding, however, Michael C. Rice, president of Nutmeg, is representing the applicant pursuant to Section 1.21(d) of the Rules.

that it was not its intention to deceive the Commission and that the stock transfers did not involve a shift in control since the Class B common stock is non-voting stock. Respondent further declares that an amendment is being properly filed to cover all Class B and Class A stock transfers to date.[8] Respondent, however, disputes allegations relating to the circumstances surrounding the reporting of the Gerbic stock purchase and the transfer of Class A stock to Ethel Rice. Respondent maintains, with respect to the former, that it submitted the proper information[9] in its January 29, 1973, amendment[10] and, as for the latter, that an FCC Form 323 was filed on December 12, 1973, to reflect this stock gift.[11] Nutmeg requests that the issues not be expanded, arguing that the Commission's rules and regulations are "burdensome for the small station operator," and that the issues should not be clouded with "trivia".

5. In reply, Windham concurs with the Bureau that Nutmeg's failure to submit accurate stock information in its application is an apparent violation of Rule 1.514, and contends that specific reference to that rule is appropriate in its requested issues since its motion articulates clear violations of Rule 1.514. In addition, Windham alleges that there are other discrepancies contained in Nutmeg's responsive pleading, and argues that these additional questions support the requested issues.

6. At the outset, it appears from the pleadings that Nutmeg violated Rule 1.514 by not filing an accurate and complete application with regard to its stock ownership, and Rules 1.615 and 1.65 in not reporting the gift transfers of the Class B common stock in a timely fashion.[12] *Cf. Athens Broadcasting Co., Inc.*, 37 FCC 2d 374, 25 RR 2d 483 (1972); *RKO General, Inc.*, 34 FCC 2d 265, 24 RR 2d 16 (1972).

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[8] A copy of this amendment, including a chart labeled "Chart A" reflecting the dates of the stock transfers, is attached to Nutmeg's pleading. Nutmeg filed the amendment on February 21, 1974, and it was accepted by the Presiding Judge, by Order, FCC 74M–235, released March 6, 1974.

[9] Respondent acknowledges that paragraph 11, Section II, page 2 contains a mistake because of a misunderstanding of the question.

[10] There appears to be some confusion, reflected in the allegations and response, regarding the dates when paragraph 11, Section II, page 2 and the disclosure pertaining to Gerbic's stock transfer were filed and with which amendment they were attached, *i.e.*, the November 22, 1972, amendment or the January 29, 1973, amendment.

[11] Nutmeg filed an unauthorized pleading in response to that portion of the Bureau's comments which had inappropriately raised new matter for the first time. *Cf. Saul M. Miller*, FCC 62R–122, 24 RR 550 (1962). In light of the facts that the Bureau's pleading raises new matter, that Nutmeg is not represented by legal counsel in this proceeding, and that Nutmeg's responsive pleading would aid in clarifying the issue before us, we will accept this additional pleading. *Cf. Elim Bible Institute, Inc.*, 10 FCC 2d 632, 11 RR 2d 751 (1967); *Southland, Inc.*, 37 FCC 2d 125, 126 n. 7, 25 RR 2d 186, 190 n. 7 (1972). The Board notes, however, "that a party who elects to act without counsel must assume the burden of becoming acquainted with and conforming to the requirements of the Commission's Rules." *Southland, Inc., supra.* See *Silver Beehive Telephone Co.*, 34 FCC 2d 78, 24 RR 2d 238 (1972). With respect to the Bureau's allegation, the Commission's files reflect that Nutmeg did, in fact, file an Ownership Report on December 12, 1973. Accordingly, no further discussion of this allegation is necessary.

[12] With regard to the gift transfers of non-voting stock, the fact that the late filings did not involve a shift in control of the applicant does not mitigate the significance of the violations.

The applicant's reliance upon local attorneys to inform Washington counsel does not absolve it of responsibility to timely report the above information. *CF Ultravision Broadcasting Co.*, 11 FCC 2d 394, 407, 12 RR 2d 137, 152 (1968), review denied, FCC 68–1078, October 30, 1968, affirmed *sub nom. WEBR, Inc.* v. *FCC*, 136 U.S. App. D.C. 316, 420 F. 2d 158, 16 RR 2d 2191 (1969); *Milton Broadcasting Company*, 34 FCC 2d 1036, 24 RR 2d 369 (1972); affirmed *sub nom. Mapoles* v. *FCC*, Case No. 72–1583, D.C. Cir., January 31, 1973. In the Board's view, Nutmeg's explanation regarding admitted violations appears to reflect carelessness and inattentiveness in preparing and updating its application and Ownership Reports. Even now, the applicant's amendment (see note 8, *supra*) contains at least two additional discrepancies.[13] Moreover, the question concerning the date when Nutmeg reported that Gerbic sold his stock, and submitted paragraph 11, Section II, page 2 (which fails to reflect the retirement of the stock), cannot be resolved on the basis of the pleadings since there is some indication that the pages reflecting such information may have been misfiled in the Commission's docket file. Accordingly, we believe that an inquiry is necessary to explore the facts and circumstances surrounding Nutmeg's failure to submit a complete and accurate original application, timely Ownership Reports, timely amendment to its application and the various discrepancies mentioned in the pleadings. An appropriate issue will, therefore, be added. However, inasmuch as there appears to have been no intent to mislead or deceive the Commission, and the Class B common stock transfers concerned non-voting stock, were confined within the same family, and were voluntarily reported to the Commission in an Ownership Report filed prior to the motion to enlarge issues, the issue will be added on a comparative basis only. *Cf. Minshall Broadcasting Co., Inc.*, 10 FCC 2d 647, 11 RR 2d 754 (1967); *RKO General, Inc., supra.*

7. Accordingly, IT IS ORDERED, That the motion to enlarge issues, filed December 28, 1973, by Windham Broadcasting Group IS GRANTED to the extent indicated herein, and IS DENIED in all other respects; and the issues in this proceeding ARE ENLARGED to include the following issues:

> To determine whether The Nutmeg Broadcasting Company complied with the provisions of Sections 1.514, 1.65 and 1.615 of the Commission's Rules with regard to its stock ownership, and, if not, the facts and circumstances surrounding such failure to comply; and
>
> To determine, in the light of the evidence adduced pursuant to the foregoing issue, the effect on The Nutmeg Broadcasting Company's comparative qualifications to be a Commission licensee.

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[13] First, Chart A of Nutmeg's February 21, 1974, amendment indicates that Herbert Rice's gift of Class B common stock was transferred on December 29, 1971, while the Ownership Report of February 13, 1973, reveals that the transfer occurred on December 31, 1971; and second, Nutmeg's amendment of January 29, 1973, discloses that Gerbic sold his stock on December 20, 1972, whereas the February 21, 1974, amendment indicates that the stock purchase occurred on December 1, 1972.

8. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence under the foregoing issues SHALL BE upon Windham Broadcasting Group, and the burden of proof SHALL BE upon The Nutmeg Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*